S. HRG. 99-36

PROFESSIONAL SPORTS COMMUNITY PROTECTION ACT OF 1985

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 259

TO PROTECT THE PUBLIC INTEREST IN STABLE RELATIONSHIPS AMONG COMMUNITIES, PROFESSIONAL SPORTS TEAMS AND LEAGUES AND IN THE SUCCESSFUL OPERATION OF SUCH TEAMS IN COMMUNITIES THROUGHOUT THE NATION, AND FOR OTHER PURPOSES

S. 287

TO PROTECT STABILITY IN THE LOCATION OF PROFESSIONAL SPORTS TEAMS TO ESTABLISH A PROCEDURE BY WHICH IMPORTANT COMMUNITY INTERESTS ARE CONSIDERED IN THE RELOCATION OF SUCH TEAMS, AND FOR OTHER PURPOSES

FEBRUARY 4 AND 20, 1985

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE
45-337 O WASHINGTON : 1985

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PROFESSIONAL SPORTS COMMUNITY PROTECTION ACT OF 1985

MONDAY, FEBRUARY 4, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:06 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman) presiding.

Staff members assigned to these hearings: Walter McCormick, staff counsel; James Gilmore, professional staff member; and David St. John, minority professional staff member.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. This hearing concerns S. 259, the Professional Sports Community Protection Act of 1985, which was introduced by Senator Eagleton and myself, with Senators Dixon and Simon, as cosponsors, and S. 287, which has been introduced by Senator Gorton. Both bills deal with the subject of sports franchises and the degree to which they move from one community to another.

Normally, the Congress would not concern itself with the movement of one business—a factory, for example—from one community to a second community, but a sports team is different from the normal business. A sports team is closely identified with the community itself. A sports team carries with it the support of the community, the identity of the community, and the spirit of the community.

It is a matter of economics. The sports franchise is often supported publicly by the community. For example, the financing of sports arenas or stadiums typically is a matter of public financing. And the questions exist once a team leaves a community. What is going to happen to the stadium? What does the community do with an empty stadium in its midst?

One of the concerns of Senator Gorton in drafting his bill—and he, of course, can speak for himself better than I can—and Senator Eagleton and I, in our bill, was, how can we address this question without getting the Federal Government deeply involved in the question of sports franchises?

We do not want a situation where sports is regulated by Government. We do not want a situation where any transfer of a franchise is a matter that some Government agency involves itself in. How can a situation exist in which the sport itself, as a business enter-

prise, can run its own affairs and yet provide some check on the chaotic raiding of sports teams by one city from another city.

So that is the subject of today's hearings. We have a very illustrious group of witnesses today. I am grateful for everybody's participation, but first, before we get to the witnesses, Senator Gorton.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Thank you, Mr. Chairman. I have a written statement which I will ask to be included in the record and I will not read it at this point.

I would simply begin by thanking you for working so promptly and so decisively to bring this subject before us. Professional sports has become a major role element in American life. At this point toward the end of the 20th century, they play that major role both from a psychological and morale point of view, when viewed from the perspective of the fans from one city to another across the country, but they also are a set of considerable business organizations as well.

The investments by the owners in the teams are immense. The potential for players is very gratifying to those players. The cost to the communities in which the teams play is considerable both in the construction and maintenance of stadia and from the point of view of the economic benefits which accrue to major league cities.

During the course of the last several decades, professional sports have become something with which the Congress and the courts have become increasingly familiar. Baseball has had a unique and special exemption from antitrust laws for far in excess of a half century. Major league football has come to the Congress on at least three occasions to seek special statutory favors in order that it can operate more efficiently and more profitably.

As a consequence, the interest of the Congress, reflecting the interest of people in cities and communities all across the country in professional sports, is considerable. Professional sports, in spite of the arguments of some, are not total free enterprise enterprises.

George Will said recently, and I am paraphrasing, professional sports teams are about as much private property as is Amtrak. I think that may overstate the case a little bit, but they are nonetheless very much involved in the public interest.

As a consequence, I think we have to look at a number of questions as we approach this legislation. First, the reason that there is so much interest in it is the extreme volatility of the location of sports franchises and the constantly increasing threats of moves of franchises from one city to another. Teams threaten to move not because the present city is not supporting teams in a totally adequate fashion—very frequently at a profit—but simply because the artificial shortage of teams creates a great bidding war, and cities which are large enough and sophisticated enough to support professional sports franchises are unable to get them, without raiding, without taking them from other cities which may have supported those teams for long periods of time.

The leagues, other than baseball, want some kind of quasi-immunity at least from antitrust litigation entered after the fact, which can be very, very damaging to the stability of those leagues. I am

in great sympathy, Mr. Chairman, with that desire that the leagues other than baseball be granted some kind of reasonable authority to restrict and to judge movement of the franchises.

I disagree with my distinguished colleague, the senior Senator from Missouri, in his feeling that baseball is somehow different and should not be subject to any laws except for the total exemption from antitrust laws which it has at the present time. That implies that all is well in baseball, that no moves of franchises in baseball are threatened or have taken place which are arbitrary and caused simply by profit-seeking on the part of the owners.

It would be a very difficult proposition to sell people in my State, in the city of Seattle, which had a team moved after being there 1 year. I think it would be difficult to establish that proposition right here in Washington, DC, as a matter of fact. The fact that baseball has been exempt from antitrust laws for 60 or 70 years probably means that the reasons for subjecting it to this legislation are greater, perhaps, than they are with respect to other sports.

So, while I agree with the various professional sports leagues that the leagues themselves should have some control over franchise moves, it seems to me absolutely vital that the communities which are threatened with the loss of these franchises have some say in that movement. Communities should not have a veto, because there are times when those moves are absolutely necessary for the health of the teams and the leagues. But there should be some ability to go to organizations, go to a neutral third party and say that the appropriate conditions for the move have not been met.

So, in that respect, I feel it important to apply a principle not only to football and basketball and to hockey, but to baseball as well.

Finally, of course, it seems to me inappropriate to ignore completely the aspirations of communities which are quite capable of supporting major league sports teams but which are prohibited from finding such teams except by raiding other cities because of the scarcity and the control of the number of franchises in the two principal sports, baseball and football.

It is for that reason that my bill, unlike the others, does mandate expansion. For that reason, and for one other—the injustice—I feel very keenly that has been done to the people of Baltimore very recently, and the people of Oakland not so recently, in the arbitrary loss of two successful professional football franchises from those cities.

If we are to preserve for the city of New Orleans, for the city of St. Louis, for the city of Seattle, for half a dozen other existing professional football franchises, it seems to me highly arbitrary and unjust simply to require that in futuro and not do something for the people of Baltimore and the people of Oakland, who supported their teams to pretty much the same extent that other cities have.

In any event, I am gratified with the great interest in this subject matter here today, this year on both sides of the Capitol. I think with the leadership of our distinguished new chairman of the Commerce Committee we are very likely to act both firmly, quickly, and wisely in this regard. And for that opportunity I should like once again to thank my chairman.

[The statement follows:]

OPENING STATEMENT BY SENATOR GORTON

Thank you, Mr. Chairman, for convening this hearing in such an expeditious fashion. I would like to take this opportunity to congratulate you publicly on your new leadership position on this Committee. I look forward to a productive 2 years of work by the Committee in this Congress.

I am particularly delighted that Senator Danforth has taken such an early and keen interest in the issue of sports franchise relocation. Last year, this issue was one which was of great interest to only a relatively few Senators. In the past 6 months, however, that interest has become infectious, as attempted relocations and rumors of relocations have become commonplace in big-league sports.

My paramount concern in crafting legislation to address this issue is the protection of our cities, both cities which have professional sports franchises and wish to keep them, and cities which do not now have a franchise and wish to gain one. In addition, I believe we should make reparations to 2 cities which have been particularly ill-served by the current state of affairs, Baltimore and Oakland.

In my view, it would not be difficult for the Senators on this Committee to reach an accord as to what procedure ought to be followed in future cases of a proposed relocation. To the extent that there is significant disagreement among us, however, it will lie in three areas.

First, to what sports should the bill apply? I disagree with my distinguished colleagues from Missouri about the inappropriateness of including baseball in such a bill. Senator Eagleton has stated that baseball is not included in his bill because of the unique way in which it has been treated by the courts and Congress for the past 60 years. It is for precisely that reason that if this bill could apply only to one sport, it ought to be baseball.

Major League Baseball is free to act in a totally arbitrary way in all business decisions. Owners and cities have no protection against anticompetitive activities of the leagues. In 1970 and today as well, few people in Seattle would agree with the notion that baseball should be allowed to do what it likes without so much as a passing nod at the citizens who built and are paying for the Kingdome. And why would we sympathize with the citizens of Baltimore because of the departure of the Colts, an estimated annual loss to the Maryland State economy of $36 million, and be unconcerned about the potential for an arbitrary move by the Baltimore Orioles baseball club which would constitute as much as a $93.7 million annual loss to the State's economy? Are we unconcerned merely because Justice Holmes wrote a bad decision 60 years ago which Congress has never had the political will to correct?

I doubt the Congress is prepared to correct that decision at this time, and the implications of imposing the antitrust laws with full force on a business which has operated for such a long time without such restraints certainly would require further study. But that does not mean that we are powerless to impose any restrictions on baseball whatsoever, no matter how reasonable. For that reason, I cannot support legislation on the issue of franchise relocation without the application of such legislation to Major League Baseball.

The second area of disagreement is on the question of forced expansion. I do not believe that we can pass legislation in this area without a provision in the bill on expansion. To think that Members of Congress from cities and states that want a team would allow legislation which would have the effect of freezing the status quo to pass is unrealistic. Moreover, the phenomenon we have observed in the last few years has more do do with a failure of supply to meet the demand than it does with fickle owners. Until we address that issue we will not have truely solved the problem.

And yet, even those who understand the nature of the supply problem ask, "should the federal government be telling an electronics firm, for example, when and where to build another plant?" It is true that if a professional sports league is a classic example of free enterprise, that is a valid question. But the leagues are not classic examples of free enterprise. On the other hand, one might ask whether a few years ago we would have allowed Ma Bell to decide not to supply phone service to Chicago. Obviously, professional sports leagues are not examples of public utilities either. They are sui generis, unique organizations which fall somewhere between a wholly private enterprise existing in a fully competitive market, and a public utility.

We need not tell an electronics firm to expand, because if the demand is there and one firm does not meet it, another firm will. That is the nature of competition

in a free market. Why then, does the demand for expansion in baseball and football continue to go unmet?

The answer is that we have not permitted the free enterprise system to work in professional sports. It would be virtually impossible to start a new baseball league to meet the demand of cities like Denver and Washington when a new league would have to compete against an existing league which can engage in anti-competitive activities with impunity. Likewise, in professional football, rival leagues have not fared well—in part because Congress has helped stack the deck against them. In 1961, Congress gave the leagues the ability to bargain collectively with the networks for the telecasting of games. This has given substantial financial strength and stability to the NFL. The most significant blow to free enterprise in football, however, came in 1966 when Congress permitted the merger of the AFL and the NFL. Whatever, competition had existed and which would have resulted in an increase in supply to meet demand, died with that legislation. If the AFL had not merged with the NFL, I believe Indianapolis would have had a team long ago, and would not have had to lure the Colts from Baltimore.

Why should we not leave expansion to the leagues? Because they are unlikely to expand voluntarily. Expansion is not consistent with the maximization of profits by a monopoly or a near monopoly. When a 28 team league expands to 30 teams the value of each existing franchise is somewhat diminished. The leverage of the existing franchises in dealing with the cities is also diminished. In my view, it is unlikely that the NFL will ever expand solely because more cities want teams and can support them. And I believe that Congress deserves a significant share of the blame for that fact.

The language of the 1966 bill permitting the merger of the AFL and the NFL states:

"In addition, such laws shall not apply to a joint agreement by which the member clubs of two or more professional football leagues, which are exempt from income tax under section 501(c)(6) of Title 26, combine their operations in expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto."

While it is true that the merger did not cause any decrease in the number of teams operating in 1966, it is probable that it has caused a decrease in the number of teams operating in 1985. If that is the case, Congress should be prepared to remedy the adverse effects of its previous act.

The last area of disagreement is the issue of whether, if Congress does mandate expansion, it is proper to designate a particular city to receive a team. I feel very strongly that Baltimore and Oakland have been treated so badly that they deserve special recognition from Congress. If a city had $35–40 million suddenly dropout of its economy due to a natural disaster, we would not hesitate to act. And as I have just said, I believe that certain acts of Congress helped to create the situation which prompted Indianapolis to entice the Colts away from Baltimore.

Only if one believes that an NFL team is a classic example of free enterprise and private property does the notion of designating a city which was cut loose by the league present a philosophical dilemma. But as George Will said recently, and I am paraphrasing, "Professional sports teams are about as much private property as Amtrak." I am not sure that I am in total agreement with Mr. Will on that statement, but I suspect that it is closer to the truth than the assertion that the teams are totally private and that owners owe no duty too the public. The NFL, whether intentionally or not, has breached its duty to Oakland and Baltimore and those breaches should be remedied.

With those three areas of disagreement outlined, Mr. Chairman, I am ready and eager to hear the testimony of the witnesses. I look forward to working with the Chairman, Senators Long, Eagleton, and Specter as well as the other cosponsors of these bills to resolve this unacceptable situation. I hope that we still be successful in working out our differences and that we will act swiftly before any other cities must go through the trauma of losing a team (or negotiating to keep one for that matter).

The CHAIRMAN. Senator Lautenberg.

OPENING STATEMENT BY SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you, Mr. Chairman. Congratulations on your chairmanship and this, your first meeting in the chair. I look forward to working with you in the future. I am pleased that today we are addressing an issue of great importance

to local communities—the location and relocation of professional sports teams.

Both the chairman and Senator Gorton should be commended for their efforts in seeking a solution to the problem, but in fact there are two problems. Communities that have teams want to keep them, and cities that do not, want to get them. Senator Gorton's bill recognizes that protecting the haves might hurt the have-nots and he proposes expansion.

My fear, though, is that we may go too far in freezing the status quo or not far enough in providing teams to cities that want them and can support them. New Jersey has become home to professional teams in football, baseball, hockey and soccer, and it has done so because it offers top-notch facilities and support of the public, and New Jersey wants to keep those teams.

The Meadowlands sports complex has built pride in New Jersey and it has brought jobs, over 3,000 directly, the catalyst for 37,000 more. Recently our State set sights on a baseball team that New Jersey could call its own. I am afraid that the bills before us might impede that effort.

The idea of expansion is one that I like, but the expansion of two teams is no guarantee for New Jersey. There are more than two cities around the country that want teams, and I am afraid that a bidding war will benefit the leagues and not the public.

Major league baseball has already said that New Jerseyans can go to Philadelphia or New York. I remember at one hearing, Mr. Chairman, when I asked the mayor of Baltimore whether having a team in Washington was not sufficient for local pride he reacted angrily, which I thought he should, and he encouraged me in my view.

So, Mr. Chairman, in the course of these hearings I think we ought to focus on the root cause of the problem. There are not enough teams to go around. There is an artificial scarcity of teams that results from joint decisions of league members and their anti-competitive behavior. Demand is not met by supply; it is met by ransom and higher price franchises.

When the Philadelphia Eagles threatened to move, scarcity of teams was at the bottom of it. If there was a team already in Phoenix, could the owner have held a gun to Philadephia's head and to the heads of its many fans on both sides of the Delaware? I think not.

The challenge is to address the problem of scarcity. How do we do it while maintaining quality? How do we do it while maintaining competition, and how do we do it with the least involvement of governments?

I look forward to addressing these issues and other aspects of it. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Kasten.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, thank you very much.

I would just like to follow up on what Senator Lautenberg said. I think that we want to address the problem, but we do not want to

get government, particularly the Federal Government, any more involved in these problems than they already are.

As you look at what has happened in the sports leagues over the last couple of years it is one law suit after another, and in most of these cases the league or the team or whatever is faced with a choice of being sued by one side or being sued by the other side. One way or the other, all of these things are going into litigation.

It seems to me that we ought to avoid making more kinds of confusing laws. We ought to avoid making the government intervention in this problem even more than it now is, but we ought to address the problems. In my view there are some important problems, but I think we have also seen one example, the example of Minnesota with big league baseball last year, in which the league itself addressed the problem without outside interference and did it well and did it adequately. The solution was found without Federal Government intervention and we were able to solve the problem.

I am concerned that we need to somehow give antitrust exemption or limited antitrust exemption to the NFL and possibly the other sports as well, the kind of exemption that baseball now enjoys.

Somehow or other, in this time of changing revenue sources and time of changing media, whether it is cable, pay TV, regular TV, whatever, we have got to address the problem of revenue and revenue-sharing. As a person who represents an area with three smaller teams—a football team in Green Bay, a baseball and a basketball team in Milwaukee—I think it is important to recognize that this revenue problem has got to be dealt with, and dealt with before the cat is out of the bag, so to speak, when everybody starts to sign up with different kinds of cable TV, pay TV, whatever, contracts.

Almost 60 percent of the revenue of the average NFL club comes from network television contracts. These revenues are shared equally among the 28 clubs. You get a situation where 97 percent of the leaguewide revenues are broadly shared, which is the case today in the NFL. The advantages of the clubs in the largest population media markets are, to a large extent, offset by their own contributions, the larger clubs' contributions to the teams in the smaller and the medium-sized communities and the medium-sized markets.

I think the stabilization of professional sports franchises in this country is important. We want to maintain that geographical distribution, which means we have got to have some kinds of procedures which allow for revenue sharing and cooperative arrangements.

I know that there are two or three different bills before the Congress now. Mr. Chairman, I want to join the members of the committee in thanking you for holding these hearings because I believe that this is the beginning of addressing these important problems.

Senator LONG. Mr. Chairman?

The CHAIRMAN. Senator Long.

Senator LONG. Mr. Chairman, I want to thank you for calling these hearings and for bringing this matter to the attention of the committee. I voted to report a bill out last year, and I hope very much we can act.

In the interest of getting ahead, I will not spend any more time.

The CHAIRMAN. Senator Ford.

Senator FORD. First let me compliment the chairman on the obvious new look to the committee and the podium and so forth, and it indicates that we are going to have a different view, and I am delighted to work with you on that.

Mr. Chairman, I would like to make an opening statement and I may be the only one here this morning that can give a view and make a judgment that would be in the best interest of the customer, since I feel a little bit left out. I am the only one here who does not have a major league team of some kind in his State, so I will try to give an objective view so you fellows can get what is right for you.

Senator Hollings has asked me to have his opening statement inserted in the record.

[The statement and bills follow:]

OPENING STATEMENT BY SENATOR HOLLINGS

Mr. Chairman: In comparison with our $200 billion budget deficit, our $125 billion trade deficit, and the serious threats to world peace and stability looming at every corner of the globe, the major league sports franchise relocation issue is hardly our nation's most pressing problem Nevertheless, it seems that each new month brings with it word of yet another sports team owner who is looking to move his franchise to a different city. It is appropriate, therefore, that Congress examine whether legislation is necessary to bring about at least some degree of stability, and such is the purpose of this hearing today.

Clearly, major league sports has a profound impact on the economic and cultural life of American cities. In many metropolitan areas, local taxpayers have made substantial investments in the interest of luring and keeping sports franchises in their venue. I also recognize the strong emotional ties that develop between local fans and their team.

The bills we have before us today present some interesting questions. For example, how much restriction should be placed on individual team owners, who presumably base their economic decisions on the soundest principles of free enterprise? In recent years, many of our nation's great industrial centers have suffered the loss of thousands of jobs as businesses and factories have shut their doors and moved to more favorable locations. Why should Congress now respond in the case of sports team relocations? I would like today's witnesses to address this.

Mr. Chairman, if this Committee should decide that Federal legislation is warranted, the two bills before us—S. 259 and S. 287—represent different approaches to the problem of sports franchise relocations. I look forward to testimony regarding the projected impact of each bill on the different leagues, their players, and fans across the nation.

Thank you.

II

99TH CONGRESS
1ST SESSION

S. 259

To protect the public interest in stable relationships among communities, professional sports teams and leagues and in the successful operation of such teams in communities throughout the Nation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 22 (legislative day, JANUARY 21), 1985

Mr. EAGLETON (for himself, Mr. DANFORTH, Mr. DIXON, and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To protect the public interest in stable relationships among communities, professional sports teams and leagues and in the successful operation of such teams in communities throughout the Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Professional Sports Community Protection Act of 1985".

FINDINGS

SEC. 2. The Congress finds that it is in the public interest—

(1) to preserve stability in the relationship between professional sports teams and the communities in which such teams may successfully operate;

(2) to encourage professional sports leagues to operate with policies that promote the successful operation of teams; and

(3) to promote the equitable and prompt resolution of disputes arising from the interstate operations of such leagues concerning the location of professional sports teams.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "home territory" means the geographic area within which a member club operates and plays the majority of its home games, as defined in the governing agreement or agreements of the relevant league on January 1, 1985, or upon the commencement of operations of any league after such date;

(2) "local government" means a city, county, parish, town, township, village, or any other general function governmental unit established by State law;

(3) "member club" means any member of a professional sports league;

(4) "person" means any individual, partnership, corporation, or any unincorporated association, or any

combination or association thereof, or any political subdivision;

(5) "professional sports league" or "league" means an association composed of two or more professional sports teams which has adopted, accepted, or put into effect rules for the conduct of professional sports teams which are members of that association and the regulation of contests and exhibitions in which such teams regularly engage, and which has been engaged in competition in such sport for more than seven years;

(6) "professional sports team" means any group of professional athletes organized to play major league football, basketball, hockey, or soccer and which is also a member of a league subject to the provisions of this Act; and

(7) "stadium" or "arena" means the principal physical facility within which a professional sports team plays the majority of its home games.

LAWFUL AGREEMENTS

SEC. 4. Notwithstanding any other provision of law, it is lawful for a professional sports league or its member clubs—

(1) to enforce rules or agreements authorizing the membership of such league to decide that a member club shall not change its home territory;

(2) to enforce rules or agreements for the division of revenues of such league or member clubs that tend to promote comparable economic opportunities for member clubs; or

(3) to enforce rules or agreements establishing procedures and standards for the selection or termination of the ownership of member clubs, if such policies are equally binding on all member clubs and are adopted by a majority vote of member clubs.

NOTICE OF PROPOSED CHANGE IN HOME TERRITORY

SEC. 5. (a) Any person seeking to change the home territory of a member club to a location other than such member club's home territory shall, in accordance with this section, furnish notice of such proposed change at least six months before the commencement of the season in which the member club is to play in such other home territory.

(b) Such notice shall be furnished to representatives of the professional sports league, the owner or operator of the member club's stadium or arena, and the local government for the locality in which such stadium or arena is located. Such notice shall—

(1) be in writing and delivered by certified mail;

(2) be published in one or more newspapers of general circulation within the member club's home territory; and

(3) contain a statement of the member club's intention to change its home territory, an identification of the proposed location of such member club, a summary of the reasons for such change in home territory, information regarding the factors specified in section 6(b) of this Act, and the date on which such change is scheduled to become effective.

(c) The professional sports league shall make a determination with respect to the location of such member club's home territory within three months after receipt of the notice required by this section. In making such a determination, the league shall conduct proceedings at which interested parties are afforded an opportunity to present oral or written testimony regarding a change in the location of a member club's home territory. The league shall keep a record of all such proceedings.

DECISIONS ON TEAM LOCATIONS

SEC. 6. (a) No person may change the home territory of a member club unless—

(1) such person furnishes the notice required by section 5 of this Act; and

(2) the professional sports league determines, in accordance with subsection (b) of this section, that a change in the home territory of such member club is reasonable and appropriate.

(b) In determining under this section whether a change in the home territory of a member club is reasonable and appropriate, the league shall consider and make specific findings regarding—

(1) the adequacy of such member club's existing stadium or arena in relation to other stadiums or arenas within such league;

(2) the adequacy of facilities related to or in the vicinity of such stadium or arena, including transportation, vending, retail and other facilities;

(3) the desire and ability of the owner or operator of such stadium, arena or facilities and officials of local government to remedy any inadequacies in such stadium, arena or facilities, or to provide other incentives or arrangements which would make it reasonable and appropriate for such member club to continue to be located in its home territory;

(4) the extent to which such member club has, directly or indirectly, received public financial support by means of construction of any publicly financed playing facility, special tax treatment, or other form of public

financial support, and the extent to which such support continues or remains unamortized;

(5) the effects of such change on any contract or agreement entered into by such member club and any public or private party;

(6) the extent to which the ownership or management of such member club has contributed to any circumstance that might demonstrate the need for a change in the member club's home territory;

(7) the amount of such member club's operating revenues from sports operations, including net revenues from ticket and other stadium or arena receipts from games played in the member club's stadium or arena, in relation to the median and average levels or revenues for other member clubs in the three seasons preceding the date of the member club's notice furnished under section 5 of this Act;

(8) the extent of any net operating losses experienced by such member club, exclusive of depreciation and amortization, in the three seasons preceding the date of the member club's notice furnished under section 5 of this Act;

(9) the extent to which fan support for such member club has been demonstrated by attendance,

ticket sales, and other factors while the member club has played in its home territory;

(10) the number of professional, university, and college teams playing the same sport as the member club which are currently conducting sports operations in the member club's home territory and in the proposed location of such member club, and the effects that the proposed change in the location of such member club may have on such teams and their leagues;

(11) any bona fide offer to purchase such member club at fair market value, if such offer includes continued location of such member club in its home territory;

(12) the extent to which such member club has engaged in good faith negotiations concerning reasonable arrangements under which such member club would continue to be located in its home territory and in its stadium or arena (or a suitable alternative facility in its home territory); and

(13) such other factors as may be appropriate.

JUDICIAL REVIEW

SEC. 7. (a) A determination by a league under section 5(c) of this Act may be reviewed in a civil action brought in accordance with this section by—

(1) a member club which has furnished notice under section 5 of this Act;

(2) the owner or operator of a member club's stadium or arena, or the owner or operator of any facility in which such member club seeks to play the majority of its home games; or

(3) the local government for the locality in which the stadium or arena of such member club is located.

(b) Any civil action brought under this section must be commenced within thirty days of such determination. Such action must be brought in a district court of the United States which has jurisdiction over such action under section 1331 of title 28, United States Code. No such action may be brought in any district of a State which contains such member club's home territory, or which contains the proposed location of such member club.

(c) The district court shall set aside such a determination by a league only if the district court finds that such determination was not supported by substantial evidence on the record taken as a whole, or was obtained by corruption, fraud, or undue means. The district court may grant such relief as may be appropriate, including declaratory and equitable relief.

(d) Nothing in this Act shall affect any action commenced under any provision of law regarding permission to

change the home territory of a member club, except that no such action may be commenced in any district of a State which contains such member club's home territory or which contains the proposed location of such member club.

RULES AND AGREEMENTS OF PROFESSIONAL SPORTS LEAGUES

SEC. 8. (a)(1) In order to enforce a rule or agreement under section 4 of this Act, a league must have filed such rule or agreement with the Secretary of Commerce. Such rule or agreement must be in a form that identifies the league's member clubs, and the manner in which such rule or agreement was adopted by such member clubs.

(2) Not later than thirty days after a rule or agreement is filed under this section, the Secretary of Commerce shall publish in the Federal Register a notice regarding such rule or agreement. The notice shall identify such member clubs and describe in general terms such rule or agreement.

(b) A professional sports league shall include in its rules or agreements a requirement that it consider and make specific findings regarding the factors specified in section 6(b) of this Act in making any determination whether a change in the home territory of a member club is reasonable and appropriate.

INAPPLICABILITY TO EMPLOYMENT MATTERS

SEC. 9. Nothing contained in this Act shall change, determine, or otherwise affect the applicability or inapplicability of the antitrust laws (as defined in the first section of the Clayton Act (15 U.S.C. 12) and in the Federal Trade Commission Act (15 U.S.C. 41 et seq.)), the labor laws, or any other provision of law to the wages, hours, or other terms and conditions of employment of players in any professional sports league, to any employment matter regarding players in any such league, or to any collective bargaining rights and privilege of any player union in any such league.

EFFECT ON STATE LAW

SEC. 10. Notwithstanding any other provision of law, no State or local government may maintain or enforce any law or regulation that imposes any limitation on the rules, agreements, or conduct of any professional sports league or member clubs which is inconsistent with this Act.

EFFECT ON CONTRACTS

SEC. 11. Nothing in this Act shall affect any contract, or provision of a contract, relating to the use of a stadium or arena between a member club and the owner or operator of any stadium or arena or any other person, unless such contract, or provision of a contract, is inconsistent with this Act.

II

99TH CONGRESS
1ST SESSION

S. 287

To provide stability in the location of professional sports teams, to establish a procedure by which important community interests are considered in the relocation of such teams, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 21), 1985

Mr. GORTON (for himself, Mr. MATHIAS, Mr. SARBANES, Mr. LONG, and Mr. JOHNSTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To provide stability in the location of professional sports teams, to establish a procedure by which important community interests are considered in the relocation of such teams, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Professional Sports Team Community Protection Act".

TITLE I

FINDINGS AND POLICY

SEC. 101. (a) The Congress finds that—

(1) professional sports teams achieve a strong local identity with the people of the community in which they play, and provide a source of pride and entertainment to their supporters;

(2) professional sports teams are invested with a strong public interest;

(3) the public, through a municipal stadium authority, generally authorizes capital construction bonds to finance the construction of the stadium in which a professional sports team plays;

(4) in some cases, the lease or use agreement between the municipal stadium authority and the professional sports team sets rent to defray only the operating costs of the stadium, and does not reimburse the public for the costs of constructing the stadium;

(5) professional sports stadiums often serve as focal points for substantial urban renewal projects in many communities, and often such projects involve a significant amount of Federal assistance;

(6) despite the close association with and support from the people in the community in which it plays, a professional sports team may be enticed from time to time to relocate to a new geographical location without regard to important interests and considerations which

may be thought to be inconsistent with immediate financial gain for the owner of such a team;

(7) stability in the location of professional sports teams which are members of leagues subject to the provisions of this title enhances the quality of athletic competition in leagues in which such teams operate;

(8) it is difficult for any single community or State to provide adequate protection against those professional sports team relocations which are not consistent with the public interests; and

(9) communities in which professional sports teams play derive substantial revenues and employment opportunities from the operation of such teams.

(b) It is the policy of the Congress in this title to discourage the unnecessary relocation of any professional sports team which is receiving adequate support from the people in the community in which such team plays, and to encourage, to the extent practicable, continuity and stability in the location of professional sports teams. The increased frequency of bidding contests between communities regarding the location of professional sports teams (which contests are in most cases not in the best interests of such communities) has necessitated the establishment of a procedure by which important community interests are considered in the relocation decision process.

PURPOSE

SEC. 102. It is the purpose of this title—

(1) to provide stability in the location of professional sports teams;

(2) to provide predictability with respect to the relocation of professional sports teams; and

(3) to ensure that the interests of communities which have supported such teams are considered through an equitable procedure.

DEFINITIONS

SEC. 103. As used in this title, the term—

(1) "Board" means the Professsional Sports Team Arbitration Board established in section 106 of this title;

(2) "community" means the standard metropolitan statistical area in which the team plays its home games or its assigned territory, whichever is smaller;

(3) "offer of retention" means any offer to purchase a professional sports team and to continue to locate such team in the community in which it then plays, or to provide terms not involving a transfer of ownership which will ensure that such team continues to be located in the community in which it then plays;

(4) "proposed relocation" means a proposal to relocate a team by the owner of such team who intends to retain ownership, or either the acceptance of an

offer of sale of a team by the owner or the offering to purchase a team by any person, as a result of which such team will not continue to be located in the community in which it then plays;

(5) "stadium" means the principal physical facility within which a professional sports team plays the majority of its home games; such term includes any arena, coliseum or sports complex; and

(6) "territory" means the geographic area within which a professional sports team has agreed to operate and play the majority of its home games, as that territory is defined by the relevant league.

AUTHORITY FOR RELOCATION

SEC. 104. (a) No person may change the community location of any professional sports team unless—

(1) the relevant league determines, in accordance with subsection (b) of this section, that the proposed relocation is necessary and appropriate; and

(2) such person has received the approval of the Board pursuant to section 107 of this title, unless the relevant community has provided notice (in accordance with section 106(a) of this title) that it does not desire that such a Board be established.

(b) The league shall make its determination under subsection (a)(1) of this section pursuant to such rules as the league may adopt. In making such determination, the league

shall specifically consider, taking into account the findings, policy, and purpose of this title—

(1) the adequacy of the stadium in which the team played its home games in the previous season and the willingness of the stadium authority to remedy any deficiencies in such facility;

(2) the extent to which fan support for the team has been demonstrated during the team's tenure in the community;

(3 the extent to which the team has, directly or indirectly, received public financial support by means of any publicly financed playing facility, special tax treatment, and any other form of public financial support;

(4) the degree to which the owner or management of the team has contributed to any circumstance which might otherwise demonstrate the need for such relocation;

(5) whether the team has incurred net operating losses, exclusive of depreciation and amortization, sufficient to threaten the continued financial viability of the team;

(6) the degree to which the team has engaged in good faith negotiations with members and representatives of the community concerning terms and condi-

tions under which the team would continue to play its games in such community;

(7) whether any other team in its league is located in the community in which the team is currently located;

(8) whether the team proposes to relocate to a community in which no other team in its league is located; and

(9) whether the stadium authority, if public, is not opposed to such relocation.

(c) Nothing in this section shall affect in any manner—

(1) the decision of a league, pursuant to any lawful rule of such league, to refuse to allow the relocation of any team which is a member of that league; or

(2) the validity or application of any rule of a league regarding any proposed relocation within the community in which the relevant team is currently located

NOTICE

SEC. 105. (a) Any person seeking to relocate a professional sports team to a new community location shall turnish notice of such proposed relocation to the appropriate stadium authority and to the county in which the stadium is located at least three months before the proposed date for such relocation.

(b) Such notice shall—

(1) be in writing;

(2) be delivered through certified mail or be personally delivered;

(3) contain a statement of intention to relocate, the new location, reasons for such relocation, and the date on which such relocation is scheduled to occur; and

(4) a certified copy of the determination of the league pursuant to section 104 of this title that the proposed relocation is necessary and appropriate.

(c) On the date that such a person furnishes notice pursuant to this section, such person shall also transmit to the league a cashier's check in the amount of $50,000. The league shall deposit such check in an escrow account which it establishes for such purpose. Amounts deposited under this subsection shall be used for activities of the Board established under section 106 of this title. Any amounts remaining in such account after the termination of the Board pursuant to section 106(b) of this title which are not required for expenses incurred by the Board shall be returned to such person.

ARBITRATION BOARD

SEC. 106. (a) In any case involving a proposed relocation of a professional sports team and within thirty days after notice of such proposed relocation is delivered pursuant to

section 105 of this title, there shall be established a Professional Sports Franchise Arbitration Board to carry out the activities of this section, unless the chief executive officer of the relevant community notifies the president of the American Arbitration Association in writing that the community does not desire that such a Board be established.

(b) The Board shall be composed of three members, of whom—

(1) one member shall be appointed by the relevant league;

(2) one member shall be appointed by the governmental authority which operates the stadium or, if no governmental authority operates the stadium, by the city or county in which such stadium is located; and

(3) one member shall be appointed by the president of the American Arbitration Association.

(c) No individual may serve on the Board if such individual has or might have (as a result of the relocation or sale of such team) a financial or other pecuniary interest in any professional sports team which engages in—

(1) the same sport as the professional sports team involved in the proposed relocation; or

(2) any other sport regularly played in the same community where the team then plays or in the community of the proposed relocation.

(d) The Board shall select a chairman from among its members.

(e) Any member of the Board who is not an officer or employee of the Federal Government shall be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) during which the member is engaged in the actual performance of the duties of the Board.

(f) The Board shall terminate when it reaches a final decision with respect to a proposed relocation of offer of retention in accordance with the provisions of this title.

RESPONSIBILITIES OF THE BOARD

SEC. 107. (a) All information required to be provided by this title shall also be furnished promptly to the Board. Any person who makes an offer to purchase a team or accepts an offer which would result in the relocation of a team, and any owner transmitting any notice under this title, shall, upon request of the Board, provide access to all relevant financial records necessary to allow the Board to make the determination required in subsection (e) of this section. The Board may, notwithstanding any other provision of this title, disapprove a proposed relocation if any information requested by the Board is not submitted in a timely manner.

(b)(1) Within two months after the establishment of the Board, any person wishing to make an offer of retention under this title shall make such offer and furnish notice of such offer in accordance with the provisions of this subsection.

(2) Such notice shall be furnished to the team, to the relevant league, to the stadium authority, to the county in which such team plays, and to the Board. Such notice shall—

(A) be in writing;

(B) be delivered through certified mail or be personally delivered; and

(C) contain a statement of intention to purchase such team and to continue thereafter to locate the team in the same community or to provide terms not involving a transfer of ownership which are more favorable to such team than the terms currently in effect.

(c)(1) Not earlier than two months nor later than three months after notice is furnished pursuant to section 105(a) of this title, the Board shall conduct a formal hearing on the record—

(1) to consider de novo whether, after specifically considering the factors identified in section 104(b) of this title and taking into account the findings, policy

and purpose of this title, the proposed relocation is necessary and appropriate; and

(2) if it appears to the Board that the proposed relocation is necessary and appropriate, to take evidence and consider testimony regarding the estimated value of any such proposed relocation or offer of retention.

(d) If the Board determines that the proposed relocation is not necessary and appropriate, the Board shall disapprove the proposed relocation.

(e) After the hearing required by subsection (c) of this section and not later than three months after notice is furnished pursuant to section 105(a) of this title, if the Board determines that the proposed relocation is necessary and appropriate, it shall determine whether any offer of retention is equal to or greater in value than the proposed relocation. The Board may contract with an independent actuary for all such valuations.

(f)(1) If the Board determines under subsection (e) of this section that it has received an offer of retention which does not involve a change of team ownership and which is of a value equal to or greater than the proposed relocation, it shall disapprove the proposed relocation. If an offer of retention which would involve a change in team ownership is determined by the Board to be of a value equal to or greater

than the proposed relocation, the Board shall, before approving or disapproving the proposed relocation, transmit all necessary and appropriate information concerning such offer of retention to the relevant league.

(2) After receipt from the Board of the information regarding the offer of retention, the league shall review such offer under its applicable rules for a transfer of league membership. If, by vote of a simple majority of its members and based upon a written record, the league determines that the person making such offer of retention satisfied the criteria of the league for a transfer of league membership, it shall so inform the Board, and the Board shall then disapprove the proposed relocation. If, by vote of a simple majority of its members and based upon a written record, the league determines that the person making the offer of retention does not satisfy the criteria of the league for a transfer of membership, it shall so inform the Board, and the Board shall then approve the relocation. If more than one offer of retention is transmitted by the Board to the league for its consideration, the league, if it determines that more than one offer of retention has been made with respect to which the offeror satisfies the criteria of the league for a transfer of membership, may indicate to the Board its order of preference for membership. If the team owner elects to accept any such offer, the team owner shall accept any offer which is preferred by the league.

(g) If the Board determines that the proposed relocation is necessary and appropriate and that it has received no offer of retention which is of a value equal to or greater than the proposed relocation, the Board shall approve the relocation.

(h) No decision of the Board under this section shall become effective until five days after such decision is made. A court may, in accordance with section 108 of this title, stay the effective date of such decision during the pendency of judicial review proceedings under such section.

(i) Any information submitted to the Board which relates to the financial condition of the team seeking to relocate shall be confidential and shall not be disclosed, except when required under court order or as required in the course of judicial review of any decision made by the Board pursuant to the provisions of this title. Any such disclosure shall be made under such terms and conditions as the reviewing court may direct.

(j) The Board may obtain the assistance of counsel regarding its activities or in response to any action brought under section 108 of this title.

JUDICIAL REVIEW

SEC. 108. (a) Except as provided in this section, no person (including a team, league or community) may bring a civil action seeking judicial review of any act or decision made pursuant to any authority specifically provided in this title. For purposes of this section—

(1) a determination by a league, after specific consideration of the factors set forth in section 104 of this title, that a proposed relocation is or is not necessary and appropriate shall be considered to be an act or decision made pursuant to authority specifically provided in this title; and

(2) any act or decision by a league under section 104(c) of this title shall not be considered to be an act or decision made pursuant to authority specifically provided in this title.

(b) No team, community, or other person aggrieved by a decision of a league under section 104 of this title may seek judicial review of the decision, but any such community may seek judicial review in the district court of the United States for the district in which the team is currently located solely regarding whether the league specifically considered the factors identified in section 104(b) of this title. The court may award such equitable relief, other than an award of damages, as the court considers appropriate.

(c) No team, community, or other person aggrieved by a decision of the Board pursuant to section 107 (d) or (g) of this title may seek judicial review of the decision, but such team, community or person may seek judicial review in the district court of the United States for the district in which the team is currently located solely regarding whether the Board spe-

cifically considered the factors identified in section 104(b) of this title. If such review is sought, the court may stay the effective date of any such decision during the period of such review.

(d) Any person wishing to seek judicial review under subsection (b) or (c) of this section shall seek such review within thirty days after the decision of the league or Board, as appropriate.

(e) Any person aggrieved by any decision made by a league pursuant to section 107(e) of this title or by the Board pursuant to section 107(f)(2) of this title may seek judicial review of such decision in the district court of the United States for the district in which the team is currently located. In any such review, the court shall consider whether such decision was arbitrary, capricious or an abuse of discretion, or was a violation of any applicable Federal or State law. The procedures relevant to such standard of review in chapter 7 of title 5, United States Code, shall apply to such review.

(f) Any person may bring an action in the district court of the United States for the district in which the team is currently located or was located in the previous season to enjoin a failure to comply with any provision of this title regarding relocation of a professional sports team or a failure to comply with any decision by a league or the Board under this

title, unless such decision is the subject of judicial review under subsection (b) or (c) of this section.

EFFECT ON CONTRACTS

SEC. 109. Nothing in this title shall affect in any manner any contract between a professional sports team and any stadium or other person, unless such contract is inconsistent with the provisions of section 110 of this title.

APPLICABILITY

SEC. 110. This title applies to any proposed relocation of a professional baseball, basketball, football, or hockey team which plays its home games in a community within the United States and which is a member of a league subject to the provisions of this title, if such relocation occurs or is scheduled to occur on or after January 24, 1985, except that nothing in this title shall affect in any manner the decision of any court to order the relocation of any professional sports team subject to the provisions of this title, in connection with any litigation regarding the location of such team which was pending on January 24, 1985.

TITLE II

AGREEMENTS RELATING TO SPONSORED TELECASTING

SEC. 201. The antitrust laws, as defined in the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and in the first section of the Clayton Act (15 U.S.C. 12), shall not apply to an agreement by a majority of the members of any professional sports league to require such members to partici-

pate in or to share revenues generated by any contract pursuant to which the rights of such members in the sponsored telecasting of any game of such league are sold or otherwise transferred (in whole or in part). Any such agreement relating to the sharing of revenues shall provide that any person who becomes a member of such league after the date of such agreement will share in such revenues in the same manner and to the same extent as the members of such league as of the date of such agreement, except that any such person will only share in such revenues in proportion to the period of time during such contract that the person is a member of such league.

ACCESS TO FACILITIES

SEC. 202. (a)(1) Each publicly owned or operated facility for the public display of games of professional sport shall be available for use by all professional sports teams on fair and reasonable terms and without unfair discrimination. Each stadium shall be made available for use by professional sports teams under nondiscriminatory and substantially comparable rates, rentals, and other charges and under nondiscriminatory and substantially comparable rules, regulations, and conditions. The right of any professional sports team which submits a request under this subsection to use any such facility shall not be unreasonably denied, notwithstanding the fact that there is an existing contract or arrangement between

such facility and any other professional sports team in effect for the season within which the requested dates occur.

(2) Whenever any professional sports team submits to any such public authority a written request for the use of such facility for team contests and exhibitions, such public autority shall, except as provided in subsection (b) of this section, permit such team to use the facility in accordance with the provisions of paragraph (1) of this subsection.

(b) No such public authority shall be required under this section to permit a professional sports team which submits a request under subsection (a) of this section to use any such facility if—

(1) the date of the requested use is the same date on which any other user of such facility has a right (under any contract or other agreement in effect on the date of the request) to use such facility for scheduled exhibitions or contests; or

(2) the requested use will impose a significant burden on the continued use of such facility by any such user who is entitled to use the facility pursuant to any contract or other agreement in effect on the date of such request.

(c) Any such public authority which receives a request for use by a professional sports team under this section shall

make such reasonable efforts as may be necessary to permit the use of the facility by such team.

(d) Any professional sports team which submits a request for use under this section may bring an action in any appropriate district court of the United States against any such public authority which fails to comply with the provisions of this section. The court may award damages and such equitable relief, including injunctive relief, as the court considers appropriate.

(e) As used in this section, the term "facility" includes facilities associated with any publicly owned or operated facility for the public display of games of professional baseball, basketball, football, or hockey.

(f) As used in this section, the term "professional sports league" shall have the meaning given to such term in section 401(2) of this Act, without regard to the length of time such league has been engaged in competition in such sport.

TITLE III

DEFINITION

SEC. 301. As used in this title, the term "antitrust laws" has the meaning given to such term in the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and in the first section of the Clayton Act (15 U.S.C. 12).

FINDINGS

SEC. 302. The Congress finds and declares that—

(1) in the past, professional sports leagues have received special treatment by Congress with respect to the application of the Federal antitrust laws;

(2) relocations of professional sports teams are likely to occur more frequently, when the number of communities which believe they can adequately support a team exceeds the number of franchises made available by professional sports leagues;

(3) because maintaining the number of franchises in a league below the level of demand increases the value of the existing franchises, increases the bargaining power of the holders of existing franchises with stadium authorities, and causes revenues from broadcasting (to the extent such revenues are shared) to be shared by fewer teams, previous increases in the number of franchises in any league generally have not been solely in response to the demand of the communities which seek such a franchise;

(4) the failure of the National Football League to respond to the demand for teams by communities such as Jacksonville, Florida, Memphis, Tennessee, Phoeniz, Arizona, and Indianapolis, Indiana, was a contributing factor in the recent move of the Baltimore Colts football team from Baltimore, Maryland;

(5) since there is a significant difference in the value to the city of Oakland, California, between the location in such city of the professional football team presently known as the Los Angeles Raiders and a new professional football team, it is appropriate that the city of Oakland be allowed to continue to pursue its eminent domain proceeding or other litigation which was pending on January 1, 1984, against the Los Angeles Raiders; and that, although section 303(a) of this title requries that the National Football League locate a new professional football team in the city of Oakland, California, if such city is not successful in such proceeding or other litigation, such location will only partly mitigate the loss to such city caused by the relocation of the Los Angeles Raiders to Los Angeles, California;

(6) there exists a clear, reasonable, and, as yet, unmet demand by certain communities in the United States for a National Football League franchise or a Major League Baseball franchise;

(7) it is unlikely that the National Football League or Major League Baseball will voluntarily increase the number of franchises in each league in the near future; and

(8) to the extent that continued or expanded special treatment under the Federal antitrust laws may, as a consequence, contribute to the perpetuation of a scarcity of franchises for professional sports teams, it is necessary to couple such continued or expanded special treatment with measures designed to prevent an unreasonable failure by such leagues to respond to the demand of communities for such franchises.

RESTRICTION AGAINST CERTAIN ACTIONS

SEC. 303. (a) Any of the following actions constitutes a violation of section 2 of the Sherman Act (15 U.S.C. 2):

(1) The failure of Major League Baseball to increase its membership by two new members over the total number of its members on January 24, 1985, and to ensure that such new members will commence play in the 1988 season.

(2) The failure of the National Football League to increase its membership by two new members over the total number of its members on January 24, 1985, and to ensure that (A) both of such new members will commence play in the league in the 1988 season, and (B) one of such new members will be located in, and play its home games in, Baltimore, Maryland.

(3) The failure of the National Football League to increase its membership by two new members over the total number of its members after the increase specified

in paragraph (2) of this subsection, and to ensure that (A) both of such new members will commence play in the league no later than the 1990 season, and (B) that one of such new members will be located in Oakland, California.

Paragraph (3)(B) of this subsection shall not constitute an unfair and exclusionary practice of the relevant league in violation of section 2 of the Sherman Act (15 U.S.C. 2) if, prior to the increase in membership specified in such paragraph, a member of the National Football League has been located in Oakland, California, either pursuant to any eminent domain proceeding or other litigation regarding such matter which was pending on January 1, 1984, or pursuant to the increase specified in paragraph (2) of this subsection.

(b) Any person who submits to Major League Baseball or the National Football League an application to operate a franchise specified in subsection (a) of this section may maintain an action pursuant to section 4 of the Clayton Act (15 U.S.C. 15) if the relevant league fails, within the time specified in subsection (a) of this section, to increase the number of franchises in such league as specified in such subsection.

(c) Notwithstanding any other provision of law, for purposes of this title, Major League Baseball is a business involved in interstate commerce and is subject to the provisions of section 2 of the Sherman Act (15 U.S.C. 2) and any other

provision of the antitrust laws necessary for the enforcement of such section.

(d) For purposes of this section, discussions among members of the National League and the American League of Major League Baseball regarding the number and the location of members of such leagues shall not be considered to be a violation of the antitrust laws.

TITLE IV

DEFINITIONS

SEC. 401. As used in this Act, the term—

(1) "person" means any individual, partnership, corporation, or any unincorporated association, or any combination or association thereof, or any political subdivision;

(2) "professional sports league" or "league" means, except as provided in section 202(f) of this Act, an association composed of two or more professional sports teams which has adopted, accepted, or put into effect rules for the conduct of professional sports teams which are members of that association and the regulation of contests and exhibitions in which such teams regularly engage, and which has been engaged in competition in such sport for more than seven years; and

(3) "professional sports team" or "team" means, in accordance with section 110 of this Act, any group

of professional athletes organized to play major league baseball, basketball, football, or hockey and which is also a member of a league subject to the provisions of this Act; the term includes all equipment and memorabilia associated with current or former athletes playing on such a team.

APPLICABILITY

SEC. 402. Nothing in this Act shall be construed to affect in any was any eminent domain proceeding or other litigation by the city of Oakland, California, against the professional football team presently known as the Los Angeles Raiders which was pending on January 1, 1984, or otherwise to affect adversely the position or rights of the city of Oakland with respect to such proceeding or litigation, including any right which may exist to relocate such professional football team in the city of Oakland.

OVERSIGHT

SEC. 403. The Senate Committee on Commerce, Science, and Transportation shall conduct periodic oversight hearings on the effects of this Act no less often than annually for the first three years following the date of enactment of this Act. As part of such hearings, the committee will consider testimony from the Federal Trade Commission, consumers, members of professional sports leagues, and players for professional sports teams. The committee shall also consider the need or desirability, or both, of the establishment of a

national policy regarding the expansion of professional sports leagues.

SEVERABILITY

SEC. 404. If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those with respect to which it is held invalid, shall not be affected by such invalidation.

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The CHAIRMAN. Senator Eagleton, thank you for being with us.

STATEMENT OF HON. THOMAS F. EAGLETON, U.S. SENATOR FROM MISSOURI

Senator EAGLETON. Thank you, Mr. Chairman.

As this committee well knows, there is an urgent need to bring order out of the chaos which is afflicting much of professional sports. We have witnessed teams cavalierly abandoning or threatening to abandon their home town for other cities, leaving in their wake a financially or otherwise distraught community.

The contemplated relocations of the St. Louis football Cardinals and the Kansas City Kings, of course, are of immediate concern to me, but this problem is nationwide in scope. Legislation which Chairman Danforth and I recently introduced is an attempt to respond sensibly, we believe, to this disturbing trend.

The problem we face today has been made acute by the Oakland Raiders case. Teams assert that they are now left free to move at the sole discretion of the owner and for any reason, and leagues are seemingly powerless to restrain their member clubs' action.

Congress I think has before it some choices. It can endure the status quo, leaving many cities thus completely vulnerable; Congress can overreact by hamstringing the leagues and by setting itself up as some kind of a sports czar; or Congress can devise fair guidelines that recognize the leagues' right to operate like a business, but with an accompanying obligation to ensure stability and fairness between sports teams and their communities.

Let me briefly describe how S. 259 effectively pursues that latter course. We would propose to clarify three areas presently in some form of legal confusion in which the leagues should be allowed to manage their own affairs. Under our bills, the leagues—by that I mean those for all sports but baseball—will be given the authority to first decide on team relocations. Leagues would be insulated from antitrust conspiracy liability in cases where they reject a team transfer. Thus this would be a limited antitrust clarification.

Second, leagues are permitted to pool network revenues and to promote comparable division. And, third, leagues may select to terminate a team owner when there is good cause for doing so.

If a team wants to relocate it must file a notice of its intention at least 6 months before the start of the new season. The league has clear authority to rule on their request, but in return is required by abide by and make specific findings regarding some carefully drawn criteria. These criteria include the team's likely reasons for a move, but also the manifest interest of the community in retaining its team.

Essentially these criteria are designed to ensure that if a team is well supported by and is succeeding in a given community it would be precluded from moving. While our bill restores authority to the leagues, it does not grant them unbridled discretion, for judicial review is provided to those that are affected—to the team, to the local government, and to the stadium owners.

We specify that review must be sought in what we call a neutral Federal district court. By this I mean no action may be brought in any district that contains either the member club's home territory

or the proposed new location. From past experience, it is clear that neither the community trying to retain the team, nor the city luring one can provide an objective forum for evaluating a league relocation decision on the merits, for it may set aside a league determination if it is not supported by substantial evidence on the record.

To aid the court in this evaluation, the league is required during its deliberations to afford an opportunity for interested parties to present oral and written testimony and to keep a record of the proceedings.

Mr. Chairman, new bills to regulate pro sports are piling up faster than Dan Marino's passing records. Understandably, each seeks to remedy a specific set of perceived problems. But one issue Congress must include in any final legislation includes the concerns for the pooling of league revenues, a matter addressed by Senator Kasten.

This could be the next big issue in sports law headed to the Supreme Court for resolution. I do not want Congress, through inaction, to witness the day that leagues operate under a Court decision forbidding revenue pooling. In the case of at least the National Football League that, I believe, would spell the beginning of the end.

As was pointed out, some 60 percent of each club's revenue in the National Football League is derived from TV revenue sharing, and without a shared draw many teams in smaller metropolitan areas, such as Green Bay and St. Louis, would not survive. Ticket sales alone are not enough to sustain most teams. Our bill would prevent such an occurrence by sanctioning the revenue-sharing provisions the league members would see fit to adopt in their league agreement.

Now, finally, let me make it clear what our bill does not do. It does not permit any kind of veto of a league's relocation decision, save the opportunity for judicial review, nor does it mandate or earmark expansion of franchises to new cities.

I can think of few propositions more heavyhanded and intrusive into the affairs of private business than to so do. In fact, I consider it wildly inappropriate that Congress would specify how large a league should be and target specific cities in which teams should play.

The bill will not cover baseball, for the simple reason that the Supreme Court consistently has recognized baseball as a unique entity and has allowed it to regulate itself.

And, finally, the bill is not intended to impact cases currently pending in the courts. However, since the bill becomes effective on the date of its introduction, January 23, I imagine and would hope that it would provide some pause for thought among teams presently considering moves for next season.

I thank you very much for your attention, and I would be pleased to respond to any questions.

The CHAIRMAN. Thank you very much.

Let me ask you to address the question that Senator Lautenberg raised in his opening statement. He expressed concern about the have-not cities, concern about the fact that legislation might freeze

in the status quo so that communities that do not have professional sports teams would feel precluded from ever having them.

Do you view your bill as freezing in the status quo? Is it so tightly written that the communities that do not have sports teams and aspire to have them would feel compelled to resist such legislation with all the strength they can muster?

Senator EAGLETON. I do not view it in that context. I think if we look down the road between now and 1990, 5 years, it can be anticipated that there will be some expansion of professional sport franchises. But I am not here as a Senator to make a business judgment as to which city would qualify. These are, by and large, business judgments that have to be made on what would be the expected community support, what local revenues would be raised, et cetera.

And I think it would ill-suit Congress to say that city X or city Y ought to be the recipient of a particular franchise or that football, as is specified under the Gorton bill, should be expanded four teams and baseball should be expanded two teams. What right do we as Federal legislators have to make that kind of an arbitrary, precise judgment?

But I think there will be expansion. I think as the commissioners and the leaders of the various leagues will later testify I am sure that most of them will acknowledge that expansion will come. But it should not come under the heavy hand of congressional fiat.

The CHAIRMAN. Senator Gorton.

Senator GORTON. Not a question, but an observation, Mr. Chairman. Simply that it seems that a decision to cause expansion is of the same degree of handedness, whether heavy or light, as the decision to restrict movement. The questions as to whether or not the bill's chances are adversely impacted by freezing the status quo and lessening the chances for expansion are probably better addressed to people like Senator Ford and maybe Senator Goldwater and those representing cities which do not now have franchises than those of us who are protecting our own.

Senator FORD. Putting me in the same league with Senator Goldwater I appreciate very much, Senator.

Senator EAGLETON. May I emphasize, Senator Gorton, our bill does not prohibit the transfer of one team to another city. I mention in my opening statement that there were two sport franchises in Missouri that at least in the newspapers have been mentioned as possible transfer teams: the Cardinals, football, possibly to Phoenix; the Kings, basketball, possibly to Sacramento.

If you compare the factual differences between those two franchises, you can see that under the criteria spelled out in our bill it is possible that one league might prohibit a transfer because of the application of the criteria, that is the football situation, but in the case of the Kings, which have been a profitless team for several years, an attendance-short team for many years, those same criteria might well permit the transfer of the team to some other site. So it does not in perpetuity freeze the national professional franchises in the cities.

There are two transfers that I know something about in baseball. For instance, as a youngster growing up in St. Louis I attended a lot of St. Louis Browns games, me and 412 other fans. Most of the

city in what was called the "knot-hole" section paid 25 cents and practically the whole audience for that game was in that one section—very few paying customers.

The Browns were a continuously losing proposition. Had this bill been in effect then with these criteria, the Browns still would have been transferred, probably to Baltimore where they ultimately went.

Now, someone mentioned the District of Columbia. I held hearings when Bob Short moved the Washington Senators to Texas. That used to be a very powerful committee I chaired, the District of Columbia Committee. We were thirsty for publicity and so we decided to hold hearings on the transfer.

In my humble judgment, after holding those hearings, there is no way to financially sustain two professional baseball teams simultaneously in Washington and Baltimore, with the divided TV market, the two cities so closely abutting one another.

If you had one team that had all of the market, it would be, I think, the fourth or fifth biggest television market in America. As a divided market, it is pitifully small. Some might say a National League team might go here juxtaposed to an American League team in Baltimore. Possibly. That's stretching the point.

But again, those are business judgments as to what will sufficiently draw adequate fans, what revenues from concessions, et cetera, will be, parking, and most certainly television revenues. But I doubt, quite frankly, had this bill been in effect in 1970 or 1971, whenever it was that Short moved, whether the criteria of this bill would have prohibited him from making that move at that time.

The CHAIRMAN. Senator Lautenberg.

Senator LAUTENBERG. Just a brief observation to my good friend and colleague from Missouri. I agree that we should not make business judgments best left to private parties. The thing I am concerned about in the bill that we are discussing at this moment, your bill, Tom, is that the business judgment will not get exercised. If the economics are such that people do want to create a team in a given area, they are not able to because of what I think are unrealistic restrictions.

It is interesting to see among sports club owners the constant complaining about losing money despite lots of interest often in purchase or acquisition. And there are very few franchises that I am aware of that have gone down in value in the last few years, despite the weeping by many of the owners.

So I do think that it is important that we give communities that will offer the facility, and offer the support, an opportunity to have a team and not be restricted simply because the economics are made better for those who would withhold the opportunity.

Senator EAGLETON. There is nothing, I repeat, in my bill or Senator Danforth's bill or the Gorton bill that prohibits expansion. The Gorton bill mandates it as a Federal decisionmaking, which I think goes too far.

But there is nothing in the Eagleton-Danforth bill that would prohibit baseball, for instance, if it were covered by the bill, to expand into the Tampa-St. Petersberg market, which is rumored as possible, or expand into the Denver market, which is rumored as

possible, or for the National Football League to expand into other markets as well, and both leagues have expanded.

It is not a question of the record being expansionless. They have expanded at various times when they thought it was wise and propitious and there was market justification for so doing.

The CHAIRMAN. Senator Kasten.

Senator KASTEN. No questions.

The CHAIRMAN. Senator Ford.

Senator FORD. No questions.

The CHAIRMAN. Senator Long.

Senator LONG. No questions.

The CHAIRMAN. Thank you very much.

Senator EAGLETON. Thank you, Mr. Chairman.

The CHAIRMAN. Next we have a panel: Mr. Earl Foreman, commissioner of the Major Indoor Soccer League; Mr. Alexander Hadden, deputy commissioner, Major League Baseball; Mr. Pete Rozelle, commissioner of the National Football League; Mr. David Stern, commissioner of the National Basketball Association; Mr. Harry Usher, commissioner, United States Football League; and John Ziegler, president, National Hockey League.

Mr. Foreman, would you like to proceed.

STATEMENTS OF EARL FOREMAN, COMMISSIONER, MAJOR INDOOR SOCCER LEAGUE; ALEXANDER HADDEN, DEPUTY COMMISSIONER, MAJOR LEAGUE BASEBALL; PETE ROZELLE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE; DAVID STERN, COMMISSIONER, NATIONAL BASKETBALL ASSOCIATION; HARRY USHER, COMMISSIONER, UNITED STATES FOOTBALL LEAGUE; AND JOHN A. ZIEGLER, PRESIDENT, NATIONAL HOCKEY LEAGUE

Mr. FOREMAN. May it please the committee, Mr. Chairman, my name is Earl Foreman. I am the commissioner of the Major Indoor Soccer League and have served in that capacity since the formation of the league in 1978.

The indoor soccer season commences in November of each year and ends early in June, when the playoffs conclude. MISL has just started on the seventh season of play and its league games will be played before 3½ million fans this year.

The present MISL has 14 members, which are located in the Meadowlands in New Jersey, in Chicago, Bloomington, Minnesota, San Diego, Pittsburgh, Cleveland, St. Louis, Wichita, Dallas, Kansas City, Las Vegas, Tacoma, Los Angeles, and Baltimore.

Prior to my becoming commissioner of MISL, I was active in professional sports, having been an owner of the Philadelphia Eagles of the National Football League and the Baltimore Bullets of the National Basketball Association, and the owner of the Virginia Squires of the American Basketball Association. I also was the owner of the Washington Whips, an outdoor soccer team which was a member of the United Soccer League, the predecessor of the North American Soccer League, and coowner of the Spectrum, Philadelphia's indoor arena.

I have read S. 259 as introduced by Senators Eagleton and Danforth and I feel that this bill is soundly conceived and will be bene-

ficial of the professional sports leagues and the communities which they serve. I also note that, as Senator Eagleton mentioned in his news conference on the introduction of the bill, this legislation, if passed, would apply to the Major Indoor Soccer League as of December 22, 1985.

I agree with Senator Eagleton that sports leagues must be permitted to operate in ways that permit their success and profitability, and that no team should be forced to stay in a city where it cannot earn a profit. I also agree, however, that stability between sports teams and their communities is in the public interest and that it is appropriate before a move that a franchise owner secure approval from its league for a franchise shift and that, in deciding whether to permit a relocation, a league should apply standards such as those set out in the proposed bill.

I have two concerns about the bill in its present form. The first is only a question of timing. The bill provides that a determination by a league that a franchise may or may not move may be judicially reviewed in a civil action commenced within 30 days of the league's determination.

Since a team seeking to change its home territory has until 6 months before the commencement of a new season to give notice of a proposed relocation and the league has 3 months to conduct the proceedings and to make the determination contemplated by section 5(c) of the act, I am concerned that the judicial review provided for in section 7(b) will not be concluded in a timely fashion so as to enable the league and its members to promulgate a schedule and plan the playing season next ensuing after notice.

My second and more important concern involves section 7(d) of the act, which states:

> Nothing in this act shall affect any action commenced under any provision of law regarding permission to change the home territory of a member club, except that no such action may be commenced in any district of a state which contains such member club's home territory or which contains the proposed location of such member club.

It appears that the draftsman of section 7(d) may have been trying to preserve not only existing, but also future antitrust eminent domain or other action which might be commenced, not only by persons mentioned in 7(a) but also by other parties with respect to any franchise move. If it is the intention to allow a league which has followed the procedures of the act to be sued under the antitrust laws or under eminent domain statutes, the beneficial effect of the act in my view would be totally undercut.

Such a result would also be inconsistent with the language of the act itself, which appears in section 4(1) to offer total protection to a league which has complied with the procedures of the act. I think the draftsmen of the legislation should clarify the act in this regard.

I have also examined S. 287, Senator Gorton's bill, and I can state that the Major Indoor Soccer League is opposed to that bill in concept. The Gorton bill does not apply on its face to soccer. Where title I amended to apply to soccer, we would not be opposed to the concept that before a professional sports team can relocate it must obtain the permission of the league. Nor are we opposed to the spe-

cific factors set forth in the bill which a league should consider in making a determination.

However, the concept of an arbitration board is, I believe, cumbersome and unworkable, and the concept of the "offer of retention" and the evaluation of such offers present so many subjective factors as to make almost any franchise move impossible. The bill appears to create a right of last refusal in the affected community and in my view would inhibit franchise changes where needed and warranted.

I express my appreciation to the committee for the invitation to appear here this morning and set forth the views of the Major Indoor Soccer League, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Hadden.

Mr. HADDEN. Thank you. Mr. Chairman, my name is Alexander Hadden. I am deputy commissioner of baseball, having been named to that title on the 1st of January of this year. Previous to that time I functioned as secretary-treasurer and general counsel of major league baseball for about 15 years, and prior to that I was counsel for 5 years to the American League.

I am appearing here today on behalf of Peter Ueberroth, the new commissioner of baseball, and on behalf of major league baseball, and I ask that Commissioner Ueberroth's formal written statement be accepted for the record.

Mr. Chairman, there are two issues that are subject to consideration by the committee at this time. One is the propriety of the imposition of some manner of Federal control over shifts of major league franchises, professional franchises; and the other is the wisdom of the adoption of legislation which would in effect mandate expansion. I would like to submit baseball's comments on both of those issues, just briefly to supplement what has been contained in our written statement.

I might observe at the outset that major league baseball has had a unique experience in terms of both of these questions over the last 65 years in which it has enjoyed the beneficial effect of the judicially declared antitrust exemption, first decided upon by the Supreme Court in 1920. Baseball has recognized that this special exemption imposes special responsibilities on baseball. The exemption is a special treatment that baseball cherishes.

One of the criteria that we have brought to bear on the resolution of decisions involving antitrust law is to test those and review them in our inner councils as though we had no such exemption and to render decisions on a Caesar's wife basis, so that we do not subject ourselves to the concern and exposure that would involve questionable decisions under antitrust law, which might break the back of our antitrust exemption.

In terms of the application of this kind of concern to questions of franchise stability, I would like to state for the record that we are proud of our record of franchise stability in major league baseball. Among other things, we recognize and we live by the credo that in order to merit the loyalty of our fans we must earn that loyalty, and it must be reciprocal.

Look at the record. There were 10 cities in major league baseball in the northeastern quadrant of the United States in 1900. Nine of

those cities, with Washington being the sole and unfortunate exception, still have major league baseball.

There have been since 1961 40 sales of major league baseball franchises in the United States; 37 of those have been accomplished without any move of team locations. There has been only one move of a major league baseball franchise, again that being Washington, DC, Senators, in the last 15 years.

Baseball now has remained stable. Let us turn to expansion. What is the record there? Baseball since 1961 has expanded four different times. We have added 10 different teams. We are now serving 12 different cities, additional cities that were not represented on our map going back to the earlier period.

We view the subject of expansion in a favorable light. We regard expansion—failure to expand in our view would be to retrogress. If baseball remained at the present in the 10 cities in the northeastern quadrant of the United States, as we were back in the 1950's, I think the prophets of doom who were suggesting that baseball was passe and its time had come and gone would have been right.

But I think that our attraction, the renewed interest in our game, is a direct product of the cumulative nature of our expansion. We are committed to expansion. We intend to expand, and I for one would be most surprised if we do not add two teams by 1988. Indeed, I would be somewhat surprised if it did not come before that.

Eventually, we foresee the addition of six additional teams, which would be beneficial to us in a number of different respects and would permit us to have eight team/two-division league with eight teams in each division, which is our optimum scheduling arrangement.

I would like to comment briefly on our processes for evaluation of moves and expansion. We have not codified this arrangement in a code of criteria. We recognize the criteria expressed in these two bills are excellent ones. We find the subject to be more complex than that. It is difficult, I think impossible, to set down on a piece of paper everything that is important.

When you come to make decisions about franchise locations, among other things, there are subjective criteria. The evaluation of new owners in terms of their ability to function within our league as partners, that is a very subjective thing. There is some confidential information that necessarily is involved. So we feel that, while that effort to enumerate criteria is a laudable one, it does not quite reach the objective that it should.

We applaud the Danforth-Eagleton bill and we would suggest that the other sports are deserving of the same sort of immunity that baseball has.

[The statement follows:]

STATEMENT OF PETER UEBERROTH, COMMISSIONER OF MAJOR LEAGUE BASEBALL

Mr. Chairman and members of the Committee, I appreciate the opportunity to present this statement to you on behalf of Major League Baseball. We recognize the importance of the legislation now pending before your Committee on sports franchises.

I will discuss herein two issues—franchise location and League expanision—and I believe it will become clear that Baseball has demonstrated a sustained record of excellence in each of these areas. Further, the standards and procedures employed

by Baseball in decisions relating to franchise relocation and expansion are in our opinion quite responsible, from the viewpoint of both the public and the sport itself.

It is for these reasons that we believe it unwise and unnecessary for the federal government to intervene in the conduct and management of Baseball, and, among other things, to mandate expansion. We would oppose any such legislation directed toward this end.

I will begin with a brief review of Baseball's historical record on franchise moves and franchise expansion.

I. BASEBALL'S RECORD ON STABILITY OF FRANCHISE LOCATIONS AND ON EXPANSION IS EXCELLENT

Baseball has a longstanding policy of retaining teams in their home area where at all possible. Of the ten metropolitan areas where Baseball had franchises at the turn of the century, nine of those areas still have franchises today, over eighty years later. Indeed, some teams have remained in the same city since the late 1800s. The Cubs, for example, have played in Chicago since 1876, the Phillies in Philadelphia since 1883, the Pirates in Pittsburgh since 1886, the Reds in Cincinnati since 1890, and the Cardinals in St. Louis since 1892. Moreover, of the ten expansion-teams established in Baseball, eight have remained in place. This demonstrates a solid record of franchise stability.

Although there has been some movement of franchises from cities that had more than one team, that movement has had the beneficial effect of bringing Baseball to new areas and new fans across the country. And, other than Washington, D.C., all of the cities which lost a Baseball franchise either had another franchise already in place within their metropolitan area or had one located there through expansion within a short period of time.

Baseball has in fact expanded the number of its franchises on four occasions since 1961, with a total of ten new teams added to the Leagues. This has permitted us to bring Baseball to new metropolitan areas around the country, and our interest in expansion remains strong. Baseball has every intention of increasing the number of teams over the next five or six years. Expansion will probably occur in stages and may ultimately include the addition of up to six more clubs, so that there would be two 16-team Leagues.

There have of course been many transfers of ownership among established and expansion franchises without concomitant geographic relocations. Although we do not have a complete accounting of all franchise sales, our records, which are comprehensive, indicate that of some forty sales, thirty-seven have occurred without relocation of the franchise involved.

Indeed, when we appeared before your Committee last year, and later at Committee hearings in Minneapolis, there was great concern expressed by several Members that Baseball might permit the Minnesota Twins to leave Minneapolis. We assured you at that time that Baseball was committed to making every effort to keep the Twins in Minneapolis. We stated that as long as Baseball is subject to its own internal rules of governance, we would not approve an application for transfer if a fair purchase offer were available in Minneapolis on terms giving reasonable assurance of a successful operation there. We are pleased to note that Baseball was in fact able to work with the Minneapolis community to ensure that such an offer was made, and that Baseball will remain in Minneapolis. Baseball's concern for franchise stability, therefore, is not simply the fortuitous result of continuous ownership of franchises, but a concerted effort by the Leagues and the Commissioner to ensure that clubs maintain their geographic identity.

Significantly, Baseball's record on franchise stability has been even stronger in recent years. Since 1970, there has been only one relocation—the move of the Washington Senators to Texas—notwithstanding the sale of over half of the current twenty-six clubs during these same years.

Clearly, Baseball's commitment to franchise stability makes good sense for Baseball as well as for the public. Strong community support is essential to the successful operation of a franchise. Franchise stability encourages fans to follow a team's performance and track the statistics of their favorite players. Such stability also encourages intercity rivalries among teams, which again generates fan interest and excitment, and promote attendance.

In sum, Baseball continues today to place great value on the stability and continuity of its franchises, and on the opportunity to bring Baseball to more and more metropolitan areas around the country. We believe that well-supported and financially successful franchises should not, under most circumstances, relocate their operations, and we have been faithful to that philosophy.

II. BASEBALL ALREADY HAS AN EFFECTIVE SYSTEM FOR EVALUATING FRANCHISE MOVES AND EXPANSION

Baseball's record on the stability of its established and expansion franchise is no accident. It is a record in which we take great pride. Baseball has established rules and procedures which govern both the change of location of a club and the admission of new member clubs, and which have served the game and the public well.

Each League has, as part of its constitution requirements that neither expansion nor the change of location of a club can occur without the consent of three-fourths of all members of that League. In addition, as a result of a 1983 amendment to the Major League Agreement, a majority of the members of the "other League must also approve these transactions.

When a team applies for relocation of its franchise, the President of the directly affected League requests all information relevant to the proposed action, and the effect and consequences of that action upon the other members of the League. The President of the League then must evaluate this information and make a recommendation to the members of the League. This recommendation, and the League's decision, are based on much more than a simple calculation of financial profitability; they take into account a wide variety of considerations. For example, among other things, the League would consider the interests of the home community, and the support and commitment that community has given to its franchises; the existing stadium lease, and whether the team has engaged in good faith negotiations to attempt to remedy any problems with the condition of the stadium; and the effect a move may have on the structure and divisional alignment of the League, and whether traditional rivalries among teams would be affected. All of this would take place within the context of Baseball's general policy of strongly favoring franchise stability.

The Commissioner's Office also is fully involved in this process. The Commissioner, by agreement between the Leagues, is empowered to investigate, either upon complaint or upon his own initiative, any act which is charged or suspected to be not in the best interest of Baseball. The Commissioner's concerns, therefore, extend to all aspects of a proposed relocation that may affect Baseball. And, if a proposed sale is also involved in the franchise move, the Commissioner would consider the integrity and financial stability of the new owner. Of course, throughout the decision-making process, the League Office and the Commissioner always provide an opportunity for any party interested in a proposed relocation to submit any information and views that might be relevant to the issue.

In short, under Baseball's procedures, a compelling case must be made to support a franchise relocation. The perspective of both Leagues and the Commissioner in evaluating potential relocations is much broader than that of the particular team involved. While the interests of that team are necessarily important, so are those of the local fans and of the public. We think it is fair to say that Baseball is already alert to, and takes into consideration, the various criteria for franchise moves that have been set forth in the two bills before this Committee, introduced by Senators Danforth and Eagleton, and by Senator Gorton, respectively.

A very similar process occurs in terms of expansion. An application for membership into a League must be approved by three-fourths of the members of that League. An applicant must designate the city in which the new club is to be located and submit information to the League describing the organization, ownership, and financial status of the new club. The applicant must also meet certain conditions, including assurances as to the adequacy of the stadium facilities. Once again, a full opportunity is provided by the Leagues and by the Commissioner for all interested groups to participate in the expansion decision and to submit proposals that will be carefully considered. And, once again, the ultimate decisions are made by individuals experienced in the successful management of their sport. This process and this experience will be brought to bear as Baseball moves forward on expansion.

III. THE FEDERAL GOVERNMENT SHOULD NOT INTERVENE IN LEAGUE DECISIONS RELATING TO THE NUMBER AND MOVEMENT OF FRANCHISES

As I have indicated, Baseball has made every effort over the years to act responsibly on matters relating to the number and movement of franchises. And in making decisions on these issues, Baseball has always attempted to take into account the interests of the fans and the public. Baseball's system of self-governance has, we believe, worked extremely well. Baseball is very much aware of its responsibility both to those cities that currently have franchises and to those that are interested in securing one. The overall record on franchise continuity and stability has been outstanding. Expansion has occurred periodically and systematically.

In our view, this is the preferable manner for dealing with fundamental matters of league structure. Major professional sports leagues, such as Baseball, should have the freedom and the authority to exercise their business judgment, in accordance with their own rules and regulations, to assess the merits of a proposed relocation or a proposed expansion. The federal government should not be involved in such matters legislatively, and the record shows that the imposition of federal antitrust liability by the judiciary leads to franchise instability, rather than enhanced franchise stability.

Professional sports teams are not the only private enterprises which play an important economic role in the community and which may receive various types of public support. But it is not the task of the federal government to intervene in decisions by sports leagues, or by other private enterprises, whenever there are certain local interests to be served. This, unfortunately, is what we see happening in the legislation introduced by Senator Gorton (S. 287), and it is why we cannot support that legislation. We simply do not believe that federal intervention to restrict franchise relocation or to mandate expansion is good public policy.

What Senator Gorton's bill does is add a federal administrative layer, in the form of a three-person Arbitration Board, onto the process by which a professional sports team seeks to change its metropolitan location. Under this bill, a team must receive League approval for relocation and receive approval of the Arbitration Board, which would be constituted in an ad hoc fashion for each particular relocation decision. And, if both the League and the federal Arbitration Board approve the move, the matter may then go to the federal judiciary—the District Court, the Court of Appeals, and even the Supreme Court—to review the decision. This delays and encumbers the relocation process, without in our view adding anything substantively to that process. It also takes relocation decisions away from those experienced in such matters, and places them in the hands of those who lack a broad perspective beyond the one case they are deciding. No business should be forced to operate in such a manner. As Senator Eagleton stated when he introduced legislation (S. 259), sponsored by himself and Senator Danforth, on this issue:

"In some instances transfers may be appropriate, and I can think of few ways in which the Federal Government could be more intrusive and heavy handed than to require a sports team to be located in a certain town . . . ." 131 Cong. Rec. S670 (Jan. 24, 1985).

Simply put, from Baseball's perspective and based on our record, we believe it is clear that the discretion to make relocation decisions should be retained by Baseball, and not transferred to a federal Arbitration Board or the federal judiciary.

Of equal concern is the provision in Senator Gorton's bill which mandates expansion for Baseball by two teams and which requires, without exception, that such expansion occur by the 1988 season. As I have already noted, Baseball is generally committed to expansion within the next several years by perhaps as many as six teams. Thus, the "finding" in the Gorton bill that it is "unlikely" that Baseball "will voluntarily increase the number of [its] franchises" is simply not accurate.

There is no doubt regarding Baseball's desire and intention to expand. But it is a mistake, and could be counterproductive, to impose certain conditions, with a specified timetable, on Baseball. Such a mandate for expansion could lead to the very sort of financial and other problems that ultimately cause a club to seek to relocate. Indeed, the timing of expansion may depend on arranging a sound financial package among new owners, or allowing for the building of a stadium. Baseball should be permitted to take these and other factors into account making decisions regarding expansion and should not be constrained by artificial limitations. Under Senator Gorton's bill, Baseball may well be forced to award expansion franchises under less than optimal conditions, because the failure to do so would result in antitrust liability. This is not a sound way to handle such matters.

Moving to Senate Bill 259, we believe, along with Senator Danforth, that the franchise instability currently plaguing some of the major professional leagues arises from the inability of those leagues to regulate their own internal matters. Based on our own experience, we have every reason to believe that stability would be restored if the leagues are clearly granted the authority to enforce their rules and procedures on franchise decisions. This is the approach taken by Senators Danforth and Eagleton in their legislation, and it is most sensible.

Although Baseball is not covered by the Danforth/Eagleton legislation, we applaud the effort to ensure that the other major professional sports leagues also have the authority to govern their own affairs. As we noted, Baseball already takes into account the various factors listed in the Danforth/Eagleton bill in making its relocation decisions, and does so without concern for antitrust liability. This system works

fine for Baseball and, we expect, would work equally well for the other leagues should they be given this opportunity.

[The following information was subsequently received for the record:]

BASEBALL,
OFFICE OF THE COMMISSIONER,
April 23, 1985.

Hon. ERNEST F. HOLLINGS,
U.S. Senate, Washington, DC.

DEAR SENATOR HOLLINGS: This is in response to your letter of February 21, 1985 to Deputy Baseball Commissioner Alexander Hadden transmitting further questions from Senator Frank Lautenberg regarding the pending professional sports franchise relocation legislation. I apologize for the delay in responding to these inquiries.

I have undertaken on the attachment hereto to group responses to Senator Lautenberg's questions under the general subject matters his inquiries address, including expansion, relocation, revenue sharing and the financial status of Major League Baseball Clubs. I have also included the information Senator Lautenberg requested at the Committee hearing regarding franchise sales. Also enclosed are copies of the Constitutions of the American and National Leagues and the Major League and National Association Agreements and Rules.

If after you have reviewed these responses, you or any member of the Commerce Committee has any additional questions, please contact me. If, in the alternative, an additional meeting with you, Senator Lautenberg or any other member of the Senate on these issues would be desirable, we would be most pleased to make those arrangements.

Very truly yours,

EDWIN M. DURSO,
General Counsel.

Enclosures.

EXPANSION

In addition to the points made regarding expansion in Commissioner Uebewrroth's written statement to the Commerce Committee, and the testimony of Deputy Commissioner Hadden, the Commissioner has identified the criteria he feels are most important with respect to expansion. Those criteria include a solid demonstration of fan support, multiple local ownership with strong roots in the local community and solid long-term support from local community and government leadership, including an appropriate stadium lease. The availability of a suitable stadium is, of course, also a factor to be considered, but it is not Baseball's position that a stadium must exist or be at some stage of construction in order to establish any given community as a prospective expansion site.

At various times in the past, Major League Baseball has commissioned economic studies by independent consulting firms of current and prospective franchise locations. These studies have been used to evaluate expansion as well as other issues related to Baseball operations.

RELOCATION

Baseball's policy is in favor of franchise stability. It is in our overall interest to maintain franchises in the markets in which they currently exist. We need and want to continue to cultivate fan loyalty in all Major League cities as well as maintain the interclub rivalries, both new and old, which exist in the game.

It may well be that the relocation of franchises with operating deficits would be expedient as a short-term solution to such problems. However, Baseball supports franchise stability and the many positive long-term benefits that stability brings.

There are currently a number of Major League Baseball franchises for sale. Offers have been made to several owners for purchase of these Clubs and relocation to new communities. The Commissioner has blocked all current efforts to move any existing franchise in keeping with Baseball's policy objective of franchise stability. These actions represent a continuation of Baseball's impressive record of self-governance with respect to the stability of its franchise locations.

Article V. Section 2 of the Major League Agreement sets forth the voting procedures which apply to the relocation of a franchise. The Agreement provides that relocation is subject to a ¾'s vote of approval of the League in which the relocation is

taking place and a majority vote of approval of the other League. Any proposed relocation must also, of course, be approved by the Commissioner.

In the case of an American League Club attempting to relocate to New Jersey, the American League Constitution provides a further requirement: if the Club were to move to within 100 miles of Yankee Stadium, the three-quarters approving vote of the League would have to include the vote of the Yankees. In the case of a National League Club seeking to relocate within ten miles of New York City or Philadelphia, the National League Constitution requires the approving vote of the Mets or Phillies, respectively.

FINANCIAL DATA

Attached to this response as Exhibits "A" and "B" are summaries of recently-released financial information related to Baseball's past, present and future operations. As shown, the industry has suffered substantial losses in recent years and projections through 1988 show ever-increasing deficits. In 1983 our average Club lost in excess of $2.5 million. Our projections for 1984 show losses at a similar rate.

The precise impact of the expansion by the American League in 1977 on the financial operating results of the pre-existing 24 Major League Clubs is most difficult to analyze. The addition of new Clubs has the obvious result of reducing the proportionate share of Baseball's shared revenues. In addition, since the number of games in the schedule has remained constant, expansion means that each individual Club plays the other member Clubs in its League fewer times. Until the expansion Clubs are well established, this ordinarily results in the substitution of less-heavily attended games with the new Clubs for games with established members of the League which historically have drawn larger crowds and hence greater revenues.

REVENUE SHARING

The revenues derived from the licensing of radio and television rights to the national networks are placed in a central fund and are with some minor adjustments shared equally by the 26 member Clubs. The cable television compulsory licensing royalties allocated to Baseball under Section 111 of the Copyright Act of 1976 are also shared equally. Each Club also licenses broadcast rights to local over-the-air television and radio stations. For the most part, any revenues derived from such an arrangement belong solely to the contracting Club. Recently, however, certain Clubs whose games are televised by satellite-delivered "superstations" have agreed to place a portion of their revenues into a central fund to be shared by all Clubs.

Most Clubs now supplement their local television package with some package of pay telecasting (such as subscription television, pay cable or Pay-per-view). In the American League, the Clubs place a certain percentage of their pay revenues in a single fund for equal distribution to all American League members. In the National League, the participating Clubs divide, pursuant to a specific formula, the revenues derived from each pay telecast.

The Clubs also share their gate receipts. The Leagues have adopted slightly different formulas. As a general matter, however, the visiting Club is entitled to a certain share of the gate receipts for each game in which it participates. Gate receipts derived from the World Series, League Championship Series and All Star Games are divided among all the Clubs, although participating Clubs receive a somewhat greater share. A portion of the gate receipts from the World Series and the League Championship Series also funds a pool for use in paying participating player shares.

It should also be noted that Baseball Clubs not only share certain of their revenues but share certain of their expenses as well. For example, the costs associated with the operation of the Commissioner's Office and the Player Relations Committee are borne equally among the 26 member Clubs, as is the annual contribution by the Major League Clubs to the collectively-bargained Players Benefit Plan.

In 1983, the last year for which we have complete data, attendance and other gate-sensitive revenue sources and our national network radio and television income comprised approximately 80% of our total operating revenues. In varying degrees, all of this revenue is shared among all Major League Clubs. To the extent our revenue is not shared it is reflective of the need to maintain sufficient local incentive to be competitive in the entertainment marketplace over an 81 game home season.

RELATIONS BETWEEN MAJOR LEAGUES AND WITH NATIONAL ASSOCIATION CLUBS

The National and American Leagues established in 1876 and 1901, respectively, are unincorporated associations whose members include all 26 Major League franchises. Together, the Leagues are commonly referred to as Major League Baseball.

In addition, there presently exist 148 minor league teams in the United States organized into 16 separate leagues. All minor league clubs operate as members of the National Association of Professional Baseball Leagues whose offices are located in St. Petersburg, Florida.

The relationship between Major League and Minor League Clubs is governed by an agreement known as the Professional Baseball Agreement and by a set of rules called the Professional Baseball Rules. Copies of these documents are attached. Each Major League Club provides financial and administrative support to the operation of five or six National Association clubs. This system of player development is substantially governed by Professional Baseball Rule 10.

Substantial energies have been devoted in recent years toward establishing practices and procedures which recognize the interdependent nature of all our Clubs. It is our firm belief that in order to preserve the sport of baseball for the enjoyment of our fans, cooperative action and decision making by all Clubs off the field of play is necessary and appropriate. We have a long history of relationships in any number of areas in which Major League Baseball operates as a single unit. Indeed, the annual object of our enterprise, the World Series, would suffer greatly if it were not the product of a single effort. We would be opposed to any legislation that forced the dismemberment of Major League Baseball.

Finally, we do not believe there is any relationship between our antitrust status and the establishment of any new Baseball League. There have been efforts over the years to establish new leagues, none of which, to date, has resulted in the actual fielding of Clubs. That is not surprising when one considers there are already in operation in the United States 174 professional baseball teams.

FRANCHISE OWNERSHIP AND SALES

Baseball rules contain no prohibition on ownership of teams by public entities or non-profit organizations. Several Clubs are now and have in the past been owned by publicly-held corporations although we are not aware of any past or present instance currently or in the past in which a non-profit entity has operated a Major League franchise. Prospective public ownership would obviously have to be evaluated under the circumstances in which it is presented.

At the Commerce Committee's February hearing Senator Lautenberg asked Baseball to provide information on any franchise sale in recent years in which the seller received less from the new buyer than that seller had previously paid for the franchise. We have identified two such sales.

In January 1973, the current ownership of the New York Yankees purchased the Club from Columbia Broadcasting System, Inc. The approximate purchase price at that time was $10 million. CBS had in turn purchased the Club from the prior ownership in September 1964. The total purchase price of that transaction was $14 million.

In 1974, the current ownership of the San Diego Padres purchased the Club for approximately $12 million. The prior owner, C. Arnholt Smith, had acquired the San Diego expansion franchise in 1968 for a $12.5 million investment.

It should be noted, however, that the comparison of sale prices can be quite misleading. In many cases the assets and liabilities being transferred to a new purchaser are not equivalent to the assets and liabilities acquired by the prior owner. Moreover, the sale price may or may not reflect any losses or profits which the seller had suffered or enjoyed during his tenure. In many cases the simple reading of the approximate sale prices could give one a misleading picture of the overall financial transaction.

The CHAIRMAN. Thank you, sir.

Mr. Rozelle.

Mr. ROZELLE. I, too, have submitted a complete statement for the record, Mr. Chairman. I would like to make some comments in addition to that.

In regard to franchise relocation, no well-supported franchise in the National Football League moved from its home area from 1920 until 1982. Of course, that move was the Raider move from Oakland to Los Angeles. So that was 62 years in which we had no well-supported team move from its general area.

Now, the Raider situation was caused, of course, by the Raiders declaring their intention to move in 1980—to move from Oakland

to Los Angeles. They further said that they would not, in accordance with the league's constitution, ask for permission to move. They then joined the Los Angeles Coliseum in a suit against the National Football League. We had a hung jury in 1981 on that case which was tried in Los Angeles.

Then later in 1981 we went to Congress and we asked for consideration of a bill that would help us create stability and make the *Raider* case, which had had a hung jury, retroactive—rule it out retroactively. Congress at that time said: You have no problem; come back when you have one. You do not have one right now, so just go on through the course.

Then the second trial was in 1982. We were in a total of two trials on the *Raider* case for about 5 months that we spent in Los Angeles. We lost the second case. We came to Congress again.

Although we had almost 200 cosponsors, a number of people felt we could not make it retroactive. That is not done, or very seldom done, by the Congress. That case amounted to $49 million, plus interest, plus attorney fees, and that is still being appealed in the damage phase in the court on the west coast.

The city of Oakland had a suit already drawn up. In other words, whereas the Raiders had not received one affirmative vote to move when a vote was taken, if we had approved the move the city of Oakland had a suit drawn up on the same general basis of the *Raider* case, that we were leaving the San Francisco Bay market to the 49'ers, that is why we were permitting the move, and they would sue us, and we were damned if we did and damned if we did not.

About a month after the appeal panel ruled against us on the appeal of the *Raider* decision, Baltimore announced that they were looking into moving, and they did move to Indianapolis a little over a month after the appeal on the *Raider* case was turned down.

I think it was natural that the clubs felt that they had already given at the office. They had spent or were on the hook for perhaps as much as $70 million. So they said "no mas," and they had a meeting with the Baltimore Colts management and ownership and they did not take any position. While Baltimore had traditionally been a very strong franchise in the National Football League in the earlier days of Johnny Unitas, and so forth, they moved to Indianapolis.

And then the trickle soon became a torrent. Philadelphia did not consult with us, the ownership, but apparently had full intentions of moving from Philadelphia to Phoenix. In that instance we felt, well, this is getting to be too much, leaving the fourth largest market in the country. The franchise that had been successful for more than 50 years, moving out of Philadelphia.

So, in effect, we took a chance. We filed another suit, as we were filed against in the *Raider* case. This time we filed suit in Philadelphia, hoping, of course, for favorable venue. And the Eagles later said that they would remain—they would remain in Philadelphia.

St. Louis was mentioned earlier. You are aware of it, of course. They have not indicated they will move, but certainly they have talked about the possibility. They are concerned about the size of the stadium and some other factors in St. Louis. But at this time it

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is my understanding that they have the intention of staying in St. Louis.

In New Orleans we had the same situation. The owner was selling the franchise and he said that his market would be the entire country. He would sell to anyone who met his price. Since that time, the Governor of Louisiana announced last week that the owner, Mr. Mecom, had lowered his price and that a deal had been made with, I believe, the Pritzger people, and that is contingent upon certain State help which will call for an emergency legislative session that I think you are aware of, Senator Long.

In December I proposed guidelines—guidelines that in effect called upon the clubs to give reasons why they would move, that they would submit these reasons well ahead of the season in which they were about to move, and firm guidelines would cover all clubs. I just posed that at a meeting.

But frankly, they are just a license to go to court, because on the basis of the *Raider* case it is clear that they could be questioned. And the answer is not us establishing the guidelines, because that will be debated, that will be challenged, as the Raiders challenged our constitution. New Orleans and St. Louis have already gone on record saying that they do not agree to abide by the guidelines. In accordance with the outcome of the *Los Angeles Raider* case, they feel that they have no obligation to stay where they are because of that court decision.

Going on to another phase of these bills, expansion. We have more than doubled the National Football League size since I became commissioner in 1960. We had 12 teams on January 28, 1960. We expanded to Dallas, TX, for the 1960 season and to Minnesota the following year, 1961.

The next time was in 1965. A year before the merger was even discussed, we announced that we were going into Atlanta and that they would be activated in 1966; the National Football League would also expand into another unnamed, undetermined city in 1967. We made that announcement in 1965.

Then again in 1974. All these without dictate or pressure from Congress. They were done before any of the other events took place. Tampa Bay and Seattle we researched with our Stanford Research study and we researched those two cities and others. We picked Tampa Bay and Seattle, and they came in in 1976 after being picked in 1974.

Now, on expansion, we will expand. The timing is the key. We have to have a degree of stability in our league before the owners will expand. They have given evidence on three different occasions in the last 25 years in more than doubling their league. We have 28 teams in the National Football League, more than any other league, and they will expand.

The problem is to create some stability so that they can look into the future and realize that the situation is stable enough that expansion will help, as it has in the past. Dallas opened up the Southwest, Atlanta opened up the Southeast, Seattle opened up the Northwest, and it has been good for us.

We do not make money on expansion, as some other sports do, because we share television equally, and in a very short time, if not

the first 2 or 3 years, the sharing of television negates what we get for the franchise.

So I think really there are several phases of particularly the DeConcini bill and your bill with Senator Eagleton, Mr. Chairman. Those two bills tend to clarify the situation, and could create a situation that would lead to expansion. But we cannot do it until we know a little bit about the future and until we get this clarified, taking an antitrust approach.

We need certain antitrust consideration because of what we said earlier—the unique phase of our business. And we are unique. We need help, I think, in revenue-sharing so that Green Bay can continue to get as much money as New York, Minnesota can get as much as Los Angeles. That is very important.

We also think that a limited antitrust exemption is called for in our ownership policies, our right to approve new owners coming into the league. We want to pick our cities when we expand. We want to pick our owners. I think we have demonstrated in recent years, the last 25, at least, that we will do that.

I do not know for sure, but I cannot make nor have I been told of a case where the Government has told a sport, or any company, how many units they should expand by, the years they should expand, and where those expansions should take place. I feel it is unprecedented, and after we have gone right along. In other words, we are with Congress; it is the courts that have caused the problem in analyzing the structure of a sports league.

We want stability. When we have stability, we will expand. I guess that is my general message—that we will do it if we can just get a little help. We are not asking for complete antitrust exemption, but the right to make the decision. I think that we have demonstrated that we have been very prudent in that and have been very, very careful and that no team, well supported, has moved out of its area in 62 years, until 1982, when the Raiders did.

[The statement follows:]

STATEMENT OF PETE ROZELLE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE

Mr. Chairman and members of the Committee, I am pleased once again to present the views of the National Football League concerning the legal and business uncertainties now facing sports communities, fans, leagues, and teams.

For a generation, I have appeared before committees of the Congress. I have regularly been urged to assure that the NFL will continue to conduct its affairs responsibility. In my judgment, the League has done so. Public interest in our sport, and public support of the League and its teams, seems to me to conform this. I thus find it particularly troubling that federal law with respect to the relocation of teams has developed in a manner that makes responsible League action extremely difficult, if not impossible.

Your Committee has two bills before it: first, S. 259, the Professional Sports Community Protection Act of 1985, co-sponsored by you, Mr. Chairman, and other members of the Senate; and S. 287, the Professional Sports Team Community Protection Act, co-sponsored by Senator Gorton and others.

In addition, two bills dealing with these issues have been introduced and referred to the Judiciary Committee: S. 172, the Professional Football Stabilization Act of 1985, sponsored by Senator Specter; and S. 298, the Sports Community Protection and Stability Act, sponsored by Senator DeConcini.

Legislative proposals to deal with team franchise movement have multiplied during the past two years. But the problem for the NFL is not of recent vintage; it goes back more than five years. The National Basketball Association and the National Hockey League are also involved in litigation over team movement issues and

are uncertain as to their rights. Major league baseball has recently dealt with team location issues, and reportedly may soon have to face them again.

Each of the current bills is intended to protect communities, in one way or another, from abandonment by sports franchises whenever the case for a transfer may not be clear. At the same time, there are broad differences in the several bills—in their general approach in the degree of government control of the sports entertainment marketplace, and in the specific procedures proposed to control future decisionmaking on the location of sports teams.

I understand that your Committee will be hearing from many witnesses, including mayors, other community representatives, and the commissioners of other leagues. The NFL will be most interested in the views of these parties with respect to the proposed bills. We do not at this stage know whether any legislation will ultimately be regarded as necessary or warranted. However, in evaluating proposed legislation, several fundamental considerations seem to us well-established.

1. Legislation should avoid making these team movement issues more complex than they now are, since the basic need is for the elimination of confusions and risks—to communities, fans, and leagues—that recent court rulings have created.

2. Legislation should deal directly with the source of the problem, the status of sports leagues under the antitrust laws; clarify that status; and do so in narrow, well-defined ways.

3. Legislation should recognize that stability of sports league operations, including stability in franchise locations, depends on many factors and practices, such as revenue sharing among league members, that promote stability.

4. Legislation should recognize that sports leagues are best suited to manage the operations of their sports under their voluntary joint venture agreements, that leagues themselves have a strong interest in franchise stability, and that there is little or nothing in recent sports league history to warrant governmental control or direction of sports league operations.

Of the two bills before your Committee, we believe that S. 259 is the most likely to promote these objectives. It deals more directly than S. 287 with the causes of the current problem of francise "free agency"; it generally identifies realistic factors that need to be considered in evaluating team location matters; it recognizes the relationship between league practices such as revenue sharing and the stability and expansion of sports leagues; and it protects community and fan interests as well as league and team interests by outlining a framework for league decision-making on team location matters subject to prompt judicial review in neutral forums. While we have questions or reservations about some features of S. 259, we believe that it merits serious examination and consideration by everyone concerned with these matters.

THE CURRENT LEGAL CHAOS

Throughout the 1960's and 1970's the location of NFL teams was settled; teams were, in fact, committed in their home territories on a stable basis; and Congress supported League policies in this respect. It seemed clear legally that if a league were to act on a proposed club relocation, it was acting lawfully and as a single business enterprise. This was so because, as the lending academic commentator has put it, decisions on team location within a league are "essentially internal marketing decisions" of the league venture.

Neither the NFL nor other leagues created the current problem of franchise "free agency." It has arisen, instead, from the recent inability of leagues—under current interpretations of federal law—to pursue traditional policies on franchise stability. During the NFL's history, no well-supported club had ever been permitted to abandon its home community and fan base—until court decisions in the *Raiders'* case between 1980 and 1984 sanctioned the Raiders' abandonment of Oakland and left the NFL with no practical ability to deal with the Baltimore Colts' situation.

Some suggest that the NFL's concern for community and fan interests is of recent origin. Such statements ignore the League's consistent record of franchise stability throughout its modern history.

In 1966, the NFL assured Congress that no teams would be moved from their existing territories as a result of the "merger" of the NFL and the American Football League. Twice during the 1970's, successive owners of the Baltimore Colts contemplated relocating that team outside of Baltimore. On both occasions, the League would not support the transfer, because the Colts were highly succesful on the field and well-supported by their fans.

In the early 1970's, the League worked with local officials to secure improved facilities for the Buffalo Bills—who were then operating in an inadequate aging stadi-

um—rather than authorize a transfer to the Pacific Northwest. Once the new facility was agreed upon, the Bills made major financial commitments toward construction of the stadium and also committed to remain as a tenant for 25 years.

In the late 1970's as another example, the Minnesota Vikings considered relocating outside of the Twin Cities. Rather than authorize a transfer, the League worked with community and state officials to secure construction of a new, multi-purpose stadium, the Hubert H. Humphrey Metrodome in downtown Minneapolis. As a phase of that project, the League itself made commitments regarding continued operation of an NFL franchise in Minnesota for the next 30 years.

Further, under the Vikings 30-year commitment to the Metrodome, the Vikings agreed to operating terms that would fully amortize the costs of the new stadium. It is my understanding that the Vikings' use of the stadium will generate for the stadium authority some $160 million through direct and indirect payments, while substantially less than that—some $135 million—is required fully to retire the stadium bonds. Other NFL teams similarly have committed to long-term stadium arrangements that provide public authorities the revenues necessary for debt service and retirement of stadium bonds.

A review of NFL decisions on team location demonstrates, in short, both a responsible NFL policy and a consistent policy in favor of franchise stability—for sound league partnership reasons. Public respect for the League is vital to us; traditional intercity rivalries are important to us; and community support and public investments in stadiums and related facilities are important to the League and communities.

Since 1960, virtually all NFL clubs have begun play in new or significantly improved stadiums. Most have been built or improved at least partially with public financing. As a result of this wave of stadium construction in the past two decades, nineteen NFL teams have changed their operations from one local stadium to another during this period—generally within the city limits. Several of these new stadiums have been in suburban locations, such as Texas Stadium in the Dallas suburb of Irving. But the NFL had not permitted any well-supported member club to abandon its home territory, to walk away from its fans, or to ignore public investments in an unpaid-for stadium especially build for professional football.

Then came the court decisions in the *Raiders* case. They knocked the law into a cocked hat and, subject to further appeals, saddled the other 27 NFL clubs with enormous trebledamage liability for trying to respect and return the loyalty that fans and communities have shown to well-suported franchises such as the Raiders.

The current problem has its roots in the *Raiders* case. When the Raiders decided to move to Los Angeles, they had profits in the preceding seasons averaging almost $2 million, and they had the third highest ticket revenues in the entire League. The Raiders had sold out every game in Oakland for 12 straight seasons. And their publicly-financed stadium, built by the Oakland-Alameda community especially for the Raiders, had annual debt service costs of $1.5 million through the year 2006.

In May 1982, a jury sitting in Los Angeles concluded that the Oakland Raiders should become the Los Angeles Raiders. The venue of the trial was not neutral; it was intensely interested in the outcome. The Raiders' attorneys capitalized on the trial venue in Los Angeles—characterizing Oakland as the "murder capital of the United States."

The implications of that ruling for communities across the United States were widely recognized. In May 1982, for example, an experienced New York Times sports writer stated that the auctioning of franchises would become commonplace in the wake of the *Raiders'* ruling, stating in an article entitled "NFL Franchises Now Free Agents":

"With this precedent, Robert Irsay, who has often threatened in recent years to lift the Colts out of Baltimore, could invite the civic leaders of Memphis, Indianapolis, Birmingham, Phoenix and Jacksonville to an auction for his franchise. And there would be nothing to stop Montreal from bidding, even Tokyo.

"But the Colts are merely the most obvious team likely to be awarded to the highest bidder after being romanced by mayors, governors, senators and congressmen who have a stadium to fill."

A year ago, in February 1984, a split panel of the United States Court of Appeals, in a 2-1 decision, upheld the trial court's interpretation of the antitrust laws in the *Raiders'* case as well as the jury's verdict. As members of this Committee have noted, that ruling has created legal chaos and a legal vacuum with respect to the relocation of teams—what the Chairman has referred to as "the game of musical chairs that is sweeping professional sports."

The dissenting judge in the *Raiders'* case emphasized the sweep of the majority's ruling. He stated that, taken to its logical limits, the ruling means that the NFL

"may not enforce any collective decision of its member clubs over the dissent of a club member" and "is tantamount to ruling that the NFL' structure is itself per se invalid under the Sherman Act § 1 . . . ." The dissenting judge, in short, read the majority opinion as creating antitrust uncertainties on matters quite *beyond* team movement issues and in ways that could not be resolved merely by changed procedures within leagues for dealing with team movement questions.

The Baltimore Colts' situation then arose in 1984 in the immediate aftermath of the Court of Appeals' decision in the *Raiders'* case. At that point, we planned to seek an early clarification from the Supreme Court, and our clubs understandably felt they had "given at the office" since their "reward" for attempting to preserve stability in the *Raiders'* case was a $49 million treble damage penalty. The League thus took no action, one way or the other, on the Colts' relocation.

In the wake of the Colts' move, increasing concern was expressed by mayors, members of this Committee, leagues themselves, and others in Congress. Many began to suggest that new rules were needed to restore franchise stability if the courts could not or would not clear up the confusion. There was however, nothing approaching a consensus on what those rules should be—and no one was offering any guarantee that any particular rules would be legally acceptable and insulate leagues from further enormous treble damage risks for seeking to preserve existing relationships.

In recent months, there have been two further developments. First, the Supreme Court declined last November to take the *Raiders'* case—at least at its present interim stage with the damages and other issues still pending in the Court of Appeals. So any judicial clarification will have to await further rulings in the *Raiders'* case or developments in other litigation in the NFL or other professional sports.

The second development—in December—involved the Philadelphia Eagles, a well-supported NFL club with 50 years of history, reportedly leaving the country's fourth largest market for a smaller city where the United States Football League already had a franchise. At this point, with the trickle threatening to become a flood, I strongly recommended to the NFL's members that they had to take a stand in spite of the severe risks and legal confusion.

So the League did two things. First, we sued the Eagles to confirm the League's right to evaluate a proposed franchise move in concrete terms. The Eagles have entered into an interim court-approved agreement with the League to remain in Philadelphia while the League and the Eagles seek to develop arrangements to stabilize the club's financial position.

Second, in late December, I implemented League-wide policies and procedures designed to apply to future League consideration of any proposed franchise moves under the League's Constitution and By-Laws. These procedures require, among other things, that any club proposing to relocate must address the specific reasons for its relocation and justify any relocation according to specified factors bearing upon League, club, fan, and community interests. A copy of that policy memorandum is attached to this statement.

These procedures are similar to what the League in fact attempted to do in the *Raiders* case—and they are designed to produce a sound business judgment. They are also designed to assure fair consideration of all the competing interests in addition to the needs of the club involved. The major change here is that we are "billboarding" our procedures in advance. Whether this will make a difference legally is anyone's guess—like most aspects of antitrust law in sports.

More recently, there has been public discussion and speculation about possible moves by both the St. Louis Cardinals and the New Orleans Saints. Both clubs have formally notified the League that they do not consider themselves bound by League requirements because of the *Raiders'* case rulings.

The root of the legal confusions—in this an other areas of sports league operations—is not the fact that the antitrust laws apply to sports leagues, but the *way* those laws are sometimes applied. The federal courts have often recognized, as one court of appeals put it, that "the NFL clubs . . . are not competitors in an economic sense The clubs operate basically as a joint venture . . .". The Ninth Circuit majority in the *Raiders'* case itself recognized this, stating that "the NFL teams are not true competitors, nor can they be." But having acknowledged this reality, the majority ignored it and applied to the NFL clubs the same antitrust principles that would apply to joint action by routine, wholly independent business competitors. While the two-judge majority in the *Raiders'* case talked about what might be done with "standards," it made no rulings on the point—and whether other courts, or even other judges on the Ninth Circuit, would agree with those views is speculative.

Until the law is clarified, therefore, the confusion will remain. Leagues will continue to be subject to after-the-fact second-guessing and enormous treble-damage

penalties by courts and juries in partisan locations on team location matters. They will be damned if they do and damned if they don't—subject to heavy damage suits if teams are permitted to move and to heavy damage suits if teams are not permitted to move. Currently, so-called "standards" and procedures present just another set of unresolved legal issues and just another license for a disgruntled team or other parties to file antitrust treble damage claims.

THE ELEMENTS OF LEGISLATION

Before turning to specific bills, I will summarize our views as to certain essential ingredients of any legislative solution.

First, legislation must deal directly with the current antitrust law intrepretations that are the source of the current problem. As Senators Heflin and Ford stated last year with respect to the relocation bill then before this Committee, legislation that does not directly deal with the antitrust roots of the problem "is tenuous method which sidesteps the issue at hand: the explicit clarification of the Federal antitrust laws as they apply to the collective actions of professional sports league members." Legislation must thus recognize that internal league agreements on team location are lawful and enforceable under Federal law. Policies and procedures such as we have implemented within the NFL provide assurance that all interests will be fully and fairly considered in any League decision-making on team location matters.

Second, such a clarification should be limited to Section 1 of the Sherman Act, so that the governing boards or committees of leagues could act on team location matters without their decisions being treated as "conspiracies." Any clarification concerning revenue sharing or other matters should also be limited to Section 1 of the Sherman Act. In other words, legislation need not in any way affect Section 2 monopolization principles in their application to sports league operations.

Third, if mechanisms for judicial review are to be provided, they must be expeditious, effective in non-partisan forums, and not expose leagues to the hazards of punitive damage claims—in antitrust or otherwise. Leagues have repeatedly sought to act responsibly and with an eye on fan an community interests, as the NFL undertook to do in Oakland, as the NBA is attempting to do in San Diego, and as the NHL is attempting to do in St. Louis. When they do so, they should not be required to accept years of litigation in interested formums with the risk that treble damage claims can be filed as late as four years after the league has acted and that enormous treble damage claims can be crafted on internal league "conspiracy" theories.

Fouth, legislation should recognize the right of leagues to enforce internal agreements that promote league stability—such as revenue sharing. The NFL's ability to expand and conduct operations on a nationwide scale in communities of vastly differing economic potential, and its ability to insist upon team-community stability, are directly tied to the League's "partnership" structure, including revenue-shiring. Today, some 60 percent of the revenue of the typical NFL club come from network television contracts; these revenues are shared equally among all 28 clubs. When some 95 percent of League-wide revenues is shared, as in the NFL, the potential advantages of the clubs in the largest markets are to a large extent offset by their own sharing of revenues with the clubs in smaller and medium-sized markets. I am aware of no businesses other than sports leagues that possess these co-production, revenue sharing, and joint enterprise features.

THE SPECIFIC BILLS

In our judgment, S. 259 provides a sound starting point for this Committee's evaluation of these sports league issues. It authorizes professional sports leagues to keep well supported teams in their existing home territories; it involves no license for leagues to relocate well supported teams; it recognizes that team stability in professional sports cannot be achieved by outside direction but must be accomplished by sound league operating practices; it leaves decision-making on team location matters with leagues themselves while identifying certain of the many factors that leagues would consider in making those decisions; and it provides for outside judicial review. In contrast, we view the regulatory and arbitration board provisions of S. 287 as further emasculating professional sports leagues in their efforts to deal responsibly with team location issues, and we view the governmentally forced expansion provisions of that bill as unwarranted in economic, legal, practical, and policy terms.

At the same time, the NFL questions whether either bill before the Committee adequately addresses the antitrust issues that are inevitably involved here. S. 259 states that its provisions apply "notwithstanding any other provision of law," but, as noted earlier, the misguided application of antitrust conspiracy theories is the

source of the current chaos. Thus, we believe that this provision should specifically refer to, and clarify, Section 1 of the Sherman Act alone. It need be no broader.

The professional sports teams that have moved or are threatening to move are doing so because there is a lack of clear league authority, not because thee is a lack of federal regulation on the subject. Teams are moving because they believe that the antitrust laws have deprived their leagues from exercising any controls over the situation, and a clear measure of antitrust clarification is therefore essential.

We also support the revenue sharing provisions of S. 259. Revenue sharing is critical to the survival of teams in smaller communities, and it serves to avoid financial pressures for team moves before they occure. NFL teams in smaller comunities, such as Cincinnati, Green Bay, Kansas City, St. Louis, or Atlanta, are thus able to operate with a comparable revenue base and to compete on the playing field with teams from the larger metropolitan areas. Revenue sharing is also the most effective means of preserving the wide regional coverage of a league, and it has been the economic base for past NFL expansion.

Mr. Chairman, I must emphasize a further point: it is our understanding that no provision of S. 259, including the revenue sharing provision, would make any change in any law concerning sports league player-employment or labor-management matters. The bill itself specifies (in Section 9) that no changes are made in any federal law in respect of such matters. We thus understand that the revenue sharing provision deals solely with revenue sharing arrangements among league members. It has no effect, to our understanding, on any question of revenue or profit sharing, or any similar subject, that might be a matter for collective bargaining with a players' union in professional sports.

In our view, S. 287 establishes an excessively elaborate new "court" or superstructure, the Professional Sports Franchise Arbitration Board, with virtually unfettered power to determine the location of all professional sports teams in the United States. The Board is given the power to maintain teams in their present location and to require forced changes of team ownership even when it finds that a proposed move is justified under the standards established in the legislation. At a time when government regulation of major sectors of our economy is diminishing, federal statutory panels would be established with extraordinary powers to control league geography, team ownership, and—in one direction only—the economics of joint league enterprises that regularly confront difficult financial periods.

S. 287 also estalishes a "right of first refusal" and purports to provide for a comparison of the "value of the relocation" as compared to the value of an offer of retention to keep a team in a community. But the bill givens no guidance whatsoever as to how the "value" of such offers is to be determined. In this respect and others, S. 287 thus raises far more questions than it answers and would likely provide little meaningful protection to fans and communities.

FORCED EXPANSION AND DIRECT GOVERNMENT CONTROL

The case for federal government control of sports—in effect, for nationalization of the sports league business—is said by its advocates not to be widely understood. One reason for this is that the case is based on misapprehensions.

Sports leagues and their teams are not unique beneficiaries of government spending or of special tax breaks, as the proponents of government control suggest. To be sure, revenue bonds have been used to finance the construction of many stadiums. But revenue bonds are widely used in our economy to finance an extraordinary range of facilities for private activities. My understanding, for example, is that more than $20 billion in revenue bonds were used by state and local authorities for such purposes in 1982 alone. Only a minute fraction of such public financing has been devoted to the construction of municipal stadiums and that over a period of many years. By our estimate, the total of revenue bond financing for stadiums used by NFL clubs—as well as many other tenants—during the past 15 years has averaged less than $50 million annually.

Further, in most instances of public stadium financing, lease or use commitments by NFL teams are for long terms with financial obligations designed fully to amortize construction bonds. In such instances, the public authorities have commonly identified other public benefits of the bond financing as also justifying the public commitments.

In offering these comments on stadium financing, I do not suggest that the use of public financing is irrelevant to the present questions. I do suggest that such commitments are a weak reed for seeking to justify direct federal government control of professional sports.

While I am not a lawyer or tax expert, it is also my understanding that professional sports teams do not receive unique tax treatment making them especially attractive as investments. Congress reviewed the tax aspects of professional sports teams in 1976 and enacted unusual restrictive provisions that do not apply to other businesses, leaving professional sports teams less attractive in many respects from a tax standpoint than other types of investments.

Nor is there merit in the notion that prior congressional enactments justify direct federal controls of sports league business operations. Both the 1961 sports telecasting statute (15 U.S.C. § 1291, *et seq.*) and the 1966 merger statute (*id.* at § 1291) were directed at serving public interests. They preserved the existing professional sports teams in communities where those teams could not otherwise have survived. Both statutes were enacted with widespread popular and community support. Congress plainly based its actions on those considerations, not on a desire to favor a single organization. Moreover, the anticipated public benefits have, in fact, been produced in the years following these enactments by a tremendous expansion of professional sports telecasting available to fans, the survival of all of the professional football teams then in existence, and the addition of other teams.

During my tenure as NFL Commissioner, the NFL has on three different occasions expanded the League to bring professional football to growing regions of the United States without any statutory or governmental direction to do so. Through these expansions, the League commenced operations in the Southwest, the upper Midwest, the Southeast, the Pacific Northwest, and in other areas as well. By clarifying or eliminating current legal uncertainties that threaten the stability of sports league operations and pose obstacles to further expansion, legislation such as S. 259 should serve to produce conditions within sports leagues conducive to future expansion.

Legislation forcing expansion on the NFL is thus unwarranted and unsupportable both legally and practically. The NFL is not putty and that can be stretched at will in response to everybody's interests or desires. It is a joint business enterprise that confronts vigorous competition in the entertainment marketplace. it also has a finite revenue stream and heavy costs that not infrequently place NFL clubs under financial pressure, as they are now and will be in the years immediately ahead.

The NFL's careful planning and the elaborate measures undertaken by the League to ensure that new franchises will operate on a sound plane are practically necessary. Otherwise expansion represents a step backward for all concerned, including the local communities.

The NFL's history fully justifies the conclusion that the League has acted responsibly with respect to expansion. A basic reason for the growth of interest in NFL football and in the desire of American cities to obtain NFL franchises is that the League has conducted its affairs in sound fashion. It has done so with close examination of predictable economic conditions and with a studied effort to launched each expansion franchise on as solid and as contributing a plane as possible. The success of the League's most recent expansion teams, in Settale and Tampa Bay, confirms the merit of this approach. By this method, the League has progressively grown from 12 franchiese in 1960, when I became Commissioner, to its present 28 franchises. The League may be able to improve that record in the future, but not by government fiat or dictation.

In closing, I cannot fail to note tht federal law has created the current uncertainties that affect many communities. It would be highly ironic—and wholly unfair—if federal law should now be revised to impose on the League the heavy financial burdens of an arbitrarily forced expansion, when federal law itself denied the League the right to maintain team stability, and the NFL clubs are already burdened with an enormous treble damage exposure for attempting to do so.

Once again, Mr. Chairman, I thank you and the Committee's members for the opportunity to present my views today, and I appreciate your Committee's interest in these subjects.

THE NATIONAL FOOTBALL LEAGUE,
New York, December 21, 1984.

Memorandum to NFL Club Presidents:

As noted at last Tuesday's League meeting, Article 8.5 of the NFL Constitution and Bylaws vests in the Commissioner the authority to "interpret and from time to time establish policy and procedure in respect to the provisions of the Constitutions and Bylaws and any enforcement thereof." This memorandum establishes procedures and policy to apply to League consideration, pursuant to Section 4.3 of the Constitution and Bylaws, of any proposed transfer of a home territory. As stated at the League meeting, these provisions are effective immediately.

A. NOTICE AND EVALUATION OF PROPOSED TRANSFER

Section 4.3 requires prior approval by the affirmative vote of three-fourths of the member clubs of the League (the normal voting margin for League business) before a club may transfer its franchise or playing site to a different city outside its home territory. Thus, before any club may transfer its franchise or playing site outside its home territory, the club must submit a proposal for such transfer to the League on the following basis:

1. A club proposing to a transfer outside its home territory must give written notice of the proposed transfer to the Commissioner no later than January 15 of the year in which the club proposes to commence play in a new location. Such notice will be accompanied by a "stateemnt of reason" in support of the proposed transfer that will include the information outlined in Part B below.

2. The Commissioner will, with the assistance of appropriate League committees (e.g., Finance Committee, Television Committee, Competition Committee, Long-Range Planning Committee), evaluate the proposed transfer and report to the membership within 30 days of his receipt of the club's notice and accompanying "statement of reasons." The Commissioner may also convene a special committee to perform factfinding or other functions with respect to any such proposed transfer.

3. Following the Commissioner's report on the proposed transfer, the transfer will be presented to the membership for action in accordance with the Constitution and Bylaws, either at a special meeting of the League held for that purpose or at the Annual Meeting.

B. "STATEMENT OF REASONS" FOR PROPOSED TRANSFER

Any club proposing a transfer outside its home territory must, in its accompanying "statement of reasons," furnish information to this office essential to consideration of whether such a move is justified and whether it is in the League's interest.

In this connection, the club proposing to transfer must present in writing its views as to why its recent financial experience would support a relocation of the club's home revenues with League averages and medians; past and projected ticket sales and other stadium revenues at both the existing and proposed location; and operating profits or losses during the most recent four seasons. The club should also comment on any other factors it regards as relevant to the League's consideration of the proposed transfer, including but not limited to operations of other professional or college sports in the existing and proposed home territory and the effects of the proposed transfer on NFL scheduling patterns, travel requirements, current divisional alignments, traditonal rivalries, League-wide television patterns and interests, the quality of stadium facilities, and fan and public perceptions of the NFL and its member clubs.

To permit such a review, at least the following information will accompany the "statement of reasons" for the proposed transfer:

1. A copy of the club's existing stadium lease and any other agreements relating to the club's use of its current stadium (e.g., concession agreements, luxury box agreements, scoreboard advertising agreements) or to a stadium authority's or municipality's provision of related facilities (e.g., practice facilities).

2. Audited financial statements for the club for the fiscal years covering the preceding four seasons.

3. An assessment of the suitability of the club's existing stadium, costs of the prospects for making any desired improvements to the stadium, and the status of efforts to negotiate such improvements with the stadium authority.

4. A description and financial analysis of the projected lease and operating terms available to the club in its proposed new home territory.

5. A description and financial analysis of the stadium lease and operating terms available to the club in its existing home territory, on a basis that permits comparison with the projected arrangements in the proposed new location.

6. A budget projection, using accepting League charts of account, showing a projected profit and loss statement for the fiscal year covering the first three seasons in the proposed new location.

Finally, while the League has analyzed many factors in making expansion and team-move decisions in the past, I will also give consideration to the attached listing of factors, among others, in reporting to the membership on any proposed transfer outside a home territory. These factors were contained in a bill reported by a Senate committee earlier this year; they essentially restate matters that the League has considered vital in connection with team location decisions in the past. Accordingly, any club proposing to transfer should, in its submission to this office, present the

club's position as to the bearing of these factors on its proposed transfer, stating specifically why such a move is regarded as justified on these standards.

Any club proposing to transfer will have a full opportunity to state its position to the membership and to make its case for the proposed transfer. In order fully to assess a proposed transfer in light of the variety of League interests involved, and to fairly resolve the interests of all parties, it is essential that the membership be fully apprised of the relevant facts with respect to any proposed transfer. The procedures and policies outlined above are directed to that end.

PETE ROZELLE, *Commissioner.*

Attachment.

ATTACHMENT TO MEMORANDUM OF DECEMBER 21, 1984

(1) the adequacy of the stadium or arena in which the team played its home games in the previous season and the willingness of the stadium or area authority to remedy and deficiencies in such facility;

(2) the extent to which fan support for the team has been demonstrated during the team's tenure in the community;

(3) the extent to which the team has, directly or indirectly, received public financial support by means of any publicly financed playing facility, special tax treatment and any other form of public financial support;

(4) the degree to which the owner or managment of the term has contributed to any circumstance which might otherwise demonstrate the need for such relocation;

(5) whether the team has incurred net operating losses, exclusive of depreciation and amortization, sufficient to threaten the continued financial viability of the team;

(6) the degree to which the team engaged in good faith negotiations with members and representatives of the community concernig terms and conditions under which the team would continue to play its games in such community;

(7) whether any other team in its league is located in the community in which the team is currently located;

(8) whether the team proposes to relocate to a community in which no other team in its league is located; and

(9) whether the stadium or arena authority, if public, is not opposed to such relocation.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS

Question 1. For each team, each conference, and the National Football League as a whole, please provide the following expense and revenue data for the last complete year for both the regular season and for post-season play: Gross revenues, local television revenues, local radio revenues, home gate receipts, away gate receipts, parking revenues, national television revenues, and national radio revenues; and gross expenses, player salary costs, stadium rental costs, advertising costs. Please identify those revenues for each team that are derived from league-wide revenue pools.

Answer. The NFL compiles revenue and expense information from its member clubs for use in internal business planning and decisionmaking. Individual club information is not disclosed to other clubs, and all individual club information is maintained on a confidential basis. Aggregated League-wide information is periodically disclosed showing the revenues, expenses, and profit levels of the member clubs. Such information is presented on an averaged basis for various categories of clubs—for example, the nine most profitable clubs, the middle ten clubs, and the bottom nine clubs in terms of profitability in a given year. Financial information of this character for the years 1970 to 1980 was compiled in a "Summary of National Football League Economics: 1970–1980." That compilation is attached hereto as Attachment A, and a Schedule of Average Operating Profit for the NFL Clubs for the 1981 Season is at Attachment B.[1]

Because of competitive and other relationships between the NFL and other sports leagues as well as other parties, League-wide information for more recent seasons has not been published. Nor is all of the precise information requested by this question available through the charts of account used in compiling League-wide information. The following table shows an estimate of the principal information requested

[1] The attachments were retained in the Committee files.

by this question for the 1984 season for the NFL as a whole and as a per club average, except that gross revenues and gross expenses are not tabulated since that information is not disclosed on a current basis.

NATIONAL FOOTBALL LEAGUE ITEMIZED REVENUES AND EXPENSES—1984

[In thousands of dollars]

	League-wide	Per club average
Revenues:		
National television [1]	$390,000	$13,900
Gate receipts, regular season [2]	188,900	6,700
Gate receipts, preseason	38,200	1,400
Local TV and radio	21,100	754
Postseason receipts [3]	45,600	1,600
National radio [4]	3,700	132
Parking [5]	([6])	([6])
Expenses:		
Player compensation	315,400	11,300
Other player costs	65,000	2,300
Stadium costs	21,400	800
Advertising [7]	([8])	([8])
Other costs	([9])	([9])

[1] All national television receipts are shared equally by the clubs.
[2] Gate receipts are divided 60 percent to the home team and 40 percent to the visiting team, after deduction of certain expenses.
[3] The receipts of postseason games are pooled and used to pay the expenses of those games, including player salaries. The remaining amounts are divided equally among the clubs.
[4] National radio receipts are received for Monday and Thursday night games, postseason games, and other specials.
[5] The League does not segregate parking revenue information from other miscellaneous revenue.
[6] N/A.
[7] The League does not segregate advertising cost information from other miscellaneous costs.
[8] N/A.
[9] N/A.

Question 2. (a) If the NFL already had a team in Phoenix and other major markets, would the owner of the Philadelphia Eagles have been in a weaker position to exact concessions from the city of Philadelphia? (b) If Philadelphians had some assurance that it could secure an expansion team to replace the Eagles, would that have weakened the owner's position to exact concessions from the city of Philadelphia?

Answer. (a) This question is difficult to answer without engaging in considerable speculation. We do not know exactly what is meant by the reference to "other major markets." The NFL has teams in 26 of the 35 largest markets, but the economics of the professional sports marketplace in which the League operates make it quite unlikely that the League could successfully operate in all of the remaining nine markets, of which Sacramento-Stockton, California, is the largest and Columbus, Ohio, the smallest.

The presence of NFL teams in "other major markets" may or may not affect the terms that a particular team—such as the Eagles—is able to negotiate in its present home city. Stadium lease negotiations are often keyed to other factors, such as the amortization of bonds issued for stadium construction. In addition, the number of teams in a sport may be less of a factor than the use of long term leases that bind teams to remain in their existing communities, thus directly limiting the number of teams that may at any time be available for possible relocation.

The NFL was not a party to the Philadelphia negotiations, and cannot state what those negotiations might have produced in different circumstances. It is instructive to note, however, that in those same negotiations the Philadelphia Phillies baseball team reportedly secured $1 million more in lease benefits than did the Eagles, and evidently did so without considering a move outside of Philadelphia.

The subject of the Philadelphia negotiations and the possible effects of competition among cities and stadiums for NFL tenants is discussed in the NFL's letter to Senator Arlen Specter of January 7, 1985, a copy of which is attached as Attachment C.

(b) This question similarly calls for conjecture, although it is possible that the prospect of NFL expansion might have affected the negotiations between the Eagles and the City of Philadelphia. Wholesale expansion of the NFL is, however, not possible given the economics of professional football and is not a realistic solution to the problem of franchise movement. A sports league cannot, any more than any other

business, locate an operating unit or production facility in every community that wants one when the effect would be to create an enterprise whose expenses would outstrip its revenues on a permanent basis.

Question 3. (a) What is the justification for rule 3.2 of the Constitution and Bylaws of the NFL as amended through 1981, which bars the ownership of teams by non-profit entities not already members of the League? (b) Is it correct to read the rule to bar ownership of a team by a municipality or other local governmental entity? (c) If so, why should the NFL preclude public ownership as a means of retaining a team in its current locale? (d) What impact does the rule have on the ability of local governments to exercise eminent domain over a franchise?

Answer. (a) The origins and original concept of what is presently Article 3.2 are not entirely clear, although the Green Bay Packers may simply have been "grandfathered." Current justifications for the rule include the League's belief that long-term ownership of an NFL club by a municipality or similar entity is not likely to serve the interests of the League, municipalities, or the fans. These same considerations have led municipalities to refrain from direct governmental ownership of sports league and other entertainment enterprises. If a local market is capable of profitably supporting in NFL team—as has been the case in the markets where NFL clubs are located—we believe there will be sufficient number of potential private owners who will both safety the League's ownership standards and commit to preserve the team in its home market that municipal ownership will be unnecessary.

The NFL member clubs are co-producers and co-sellers of a common entertainment product. That single entertainment product competes vigorously with other forms of live entertainment and with alternative television programming. Co-production and joint action are essential to any sports league's product, and the members of a league are therefore fundamentally interdependent on one another. This economic interdependence means that each club has an interest in the management policies and business judgments of the other clubs. The NFL's belief is that a for-profit enterprise is more likely to devote sufficient attention and resources to an NFL club to make it a successful venture on the playing field and one that can strengthen the League's common business operations. A for-profit entity is more likely to make decisions designed to increase revenues, control costs, better promote professional football, and improve the common product in a manner that provides the highest quality entertainment for the fans.

(b) Yes, if "ownership" is taken as referring to the long-term or permanent ownership of a term by a municipality or other local governmental entity. Where clearly articulated state law appears to extend eminent domain to forms of intangible property such as franchise agreements, the League has not interpreted Article 3.2 as barring temporary ownership of an NFL franchise by such an entity, subject to a promt transfer of the club to a private owner who otherwise meets the League's ownership standards.

(c) See response to (a), above.

(d) There is no clear answer to this question, although, as noted, Article 3.2 reflects an established League preference for private ownership and operation of member clubs. The trial court in the City of Oakland's eminent domain case effectively treated Article 3.2 as a bar. The NFL is not a party to that case and did not assert such a position. See *City of Oakland* v. *Oakland Raiders*, No. 76004 (Cal. Super, Ct. July 16, 1984) slip op. at 7-9, pending on appeal. Other legal principles suggest that the view of this California trial court may be questionable.

Question 4. Why is it that baseball has prospered without the degree of revenue sharing practiced in football?

Answer. Many factors have contributed to the success baseball has attained. See Markham & Teplitz, Baseball Economics and Public Policy (Harvard Univ. Press, 1981). As that comprehensive study shows, baseball's structure and financial operations, are, like those of any business, geared to its particular history, needs, and character of the sport itself. Those scholars believe that a balance of mechanisms to preserve equality of teams' strength, on the one hand, and to reward and promote individual club incentive, on the other, has been vitally important in baseball. *Id.* at 19-25. Nevertheless, recent published reports indicate that many professional baseball clubs have suffered substantial financial losses in recent years. See New York Times, March 13, 1985, p. B9 (major league baseball's 1983 losses totalled over $66 million). And other recent analyses suggest that the absence of more extensive revenue sharing arrangements in baseball is "destabilizing the game by making franchises in big television markets wealthier than those in small markets." Fortune, April 15, 1985, "Baseball's New Game Plan," 16, 19.

NFL revenue sharing reflects a strong policy of league-wide balance to promote the entertainment qualities of the sport. Within that context, it is important to realize that the economics of baseball and football differ in many important ways. For example, each major league baseball club plays ten times as many games as each NFL club, and therefore has a substantially larger number of opportunities to generate attendance revenues. Television patterns also differ broadly in the two sports. NFL clubs are far more dependent on revenues generated through the League-wide television package than are professional baseball clubs, which make extensive use of non-network television, such as cable systems and so-called superstations.

Question 5. Would the NFL object to legislation barring the NFL from maintaining contracts with all three networks, as the USFL maintains, thereby barring competition on network television?

Answer. Yes. The NFL's contracts do not "bar" competition on network television, and the League perceives no legal or economic justification for such legislation. NFL television patterns, including the use of three networks on different days and times of the week, have derived from several factors, including consumer and congressional pressures for additional use of free home television by the NFL, the fact that only ABC was willing to regularly televise NFL games in prime time, the NFL's forebearance from resorting to non-network facilities, such as pay-cable or subscription television, and statutory limitations on NFL telecasts on Fridays and Saturdays.

There is no substance to the USFL's charge that the NFL's television patterns have prevented competitive sports entertainment from securing access to network television. The agreements between the NFL and the networks do not prevent the networks from televising any other sporting events, including those of the USFL. And the USFL has already secured contracts with two networks—ABC and the ESPN cable network.

Question 6. It has been suggested that if the AFL never merged with the NFL, there would have been increased expansion of football, as the two separate, competitive leagues vied for markets. Also, there would have been increased competition for players. Also, the competition would have countered upward pressure on ticket prices. In addition, if there continued to be two separate, competing leagues, joint decisions by the members of one league restricting expansion or relocation, would be less likely to be overturned under the antitrust laws, since the anticompetitive impact of such joint decision-making would be tempered by the decision of the competing league. What are your comments on each of these points?

Answer. These suggestions ignore the state of professional football in 1966, when the two leagues agreed to combine their operations. As was amply documented in the hearings and debates that led to Congress approving the formation of an expanded single league in 1966, the most likely result of maintaining the AFL and the NFL as separate leagues would have been franchise failures. As the League testified before the Judiciary Committee of the House of Representatives in 1966, "the results [of maintaining separate operations] would be player costs soaring ever upward, increasing internal deterioration of both leagues, increasing inequalities of team play within each league and the development of conditions where the ability to field representative football teams will depend solely on the franchise's willingness and ability to stand increasing losses."

Nor would maintaining separate leagues have served the interest of players. On the contrary, there would have been fewer professional football clubs operating after 1970, fewer job openings for players, and lower League collective bargaining and payroll payments if the AFL-NFL consolidation had not taken place. Congress understood this in 1966.

The reason is that, when two football leagues exist, the competition for players is not so much betweeen leagues as between individual clubs of the two leagues. The effectiveness of the team "equalization" principles within each league (which are vital to the economic stability of many of their franchises) is seriously impaired. Players choose to sign with teams in preferred cities and with clubs offering the greatest media attention, the highest revenues, and the best prospect of post-season earnings. As a result, the weaker clubs, on the playing field and economically, are unsuccessful in the player market and grow steadily weaker while the strong clubs grow steadily stronger.

The AFL Denver Broncos, for example, were unable to sign either a first- or second-round draft choice during their seven years of independent existence. Some clubs of the NFL, such as the Pittsburgh Steelers, were directing their first choices to lower-rated players simply to be able to sign them. By 1966, clubs of both leagues had simply withdrawn from the top player market. The few AFL clubs remaining in that market were competing with contracts relying on deferred bonus and salary

payments—a policy which would have imposed heavy future economic burdens on the clubs.

If the AFL-NFL consolidation had not taken place, there would have been no prospect other than a steady reduction in the number of franchises operating, a collapse of one of the two leagues, or a future amalgamation of two leagues on a reduced franchise basis. Such a contraction subsequently occurred in the wake of two-league competition in both professional basketball and professional hockey. By contrast, the AFL-NFL consolidation stabilized each of the 26 franchises then oeprating, insured their survival, and supported steadily rising club payrolls at each franchise location.

These are not theoretical observations. The All American Conference collapsed in the late 1940's because the AAC Cleveland Browns, with the strongest team in all of professional football, no longer had competitive and economically viable teams with which it could play games.

It is unlikely that ticket prices would have been significantly affected by keeping the two leagues apart. Because the AFL and the NFL only had common operations in two locations, New York and the San Francisco-Oakland Bay Area, there would have been no inter-league competition to counter "upward pressure on ticket prices" except in those two areas. Moreover, between 1970 and 1980, NFL ticket prices, in constant dollar terms, actually declined from $6.06 in 1970 to the equivalent of $5.05 in 1980. In short, the cost of attending an NFL game during the first ten years of single league operations retreated relative to other consumer prices.

The antitrust effects of two-league operations are similarly speculative. The antitrust issues that currently affect the League are not based on an absence of outside competitors. Rather, they stem from the inability of the courts to fashion antitrust principles that deal effectively with the admittedly unique operating patterns within leagues.

Question 7. Please provide the Committee with a copy of the current rules, by-laws and Constitution of the NFL.

Answer. A copy of the current NFL Constitution and By-Laws has been furnished herwith.

Question 8. What criteria, economic studies, and marketplace analyses did the NFL utilize in voting for expansion or relocation of teams?

Answer. The NFL studies expansion prospects through an expansion committee. In addition to these internal studies of expansion issues, the League has commissioned external studies of potential expansion sites by independent research organizations. For example, in preparation for its last two expansions, the NFL contracted with the Stanford Research Institute to analyze probable candidate areas with respect to certain demographic and economic factors.

These studies have involved a careful review of the many considerations that must be evaluated in connection with any decision to add new operating units to a national business such as a major sport league. Recommendations of the expansion committee are made to the League's Executive Committee, consisting of a representative of each member club, which makes the final decision on expanding the League's joint business operations. In its most recent expansion, the League determined, after considerable study, that its interests were best advanced by placing new franchises in Seattle and Tampa Bay.

Expansion of the NFL, or of any sports league, is much more than simply the issuance of an operating license. Successful expansion requires that the existing clubs, in return for franchise payments, establish the new clubs both with representative teams and as equal partners in all phases of the League's operations, including the full array of internal League partnership commitments and a pro rata share of League television receipts.

Past expansion has required careful study and planning as well as consideration of a broad range of factors, including but not limited to the existing levels of competitive balance within the League; the availability of football talent and the dilution effects of added teams; the current financial stability of the League's clubs; the state of labor relations within the League and the timetable for renewal of collective bargaining agreements with the players' union; the future prospects for television contracts and television revenues; and other such factors.

With respect to relocation decisions, the League has traditionally required that a team desiring to transfer demonstrate that it is not receiving adequate support in its home area. The policies and standards are reflected in a League policy memorandum furnished to the member clubs in December, 1984. A copy of that memorandum was attached to the League's prepared testimony before this Committee.

Question 9. In 1982, you stated: "We feel that if we were to put specific guidelines in as to a transfer of a club—as an example, how they have done financially—that

can be juggled. A team can arrange its figures in a way to show losses for several straight years." The bills before the Committee, however, includes the financial situation of a team as a factor in considering relocation. How would you propose the Committee ensure that relocation decisions are made on the basis of true financial information, if the financial status of a team is to be a factor?

Answer. My 1982 statement quoted in the question was made in the context of proposed legislation that, in the NFL's view, contained ambiguous and inadequate definitions of the financial circumstances that could warrant relocation of teams. Given these ambiguities, the use of differing accounting or operating formats, such as fiscal year versus calendar year accounting, could produce quite divergent financial assessment of a club's operations in a given "year" or "season" covering two calendar years. Informed academic commentators have taken a similarly dim view of a regulatory approach that depends upon ill-defined standards. See Antitrust Policy Professional Sports, Hearings before the Subcommittee on Monopolies and Commercial Law of the House Judiciary Committee, 97th Cong., 1st & 2d Sess. 75–77 (1981) (testimony of John C. Weistart). Currently proposed legislation (e.g., S. 259) contains improved standards with respect to financial operations that have greater substantive content and are, therefore, more meaningful. The bills currently before this Committee make a team's financial situation only one of a number of factors to be applied by a league.

More generally, the NFL believes that decisions on franchise location are critical business judgments and that there must be room for the League to exercise its judgment. In evaluating proposed relocations, the NFL would regard a team's financial circumstances as one of a number of relevant factors, to be considered on conjunction with a wide range of other interests. Operating losses alone would not necessarily be sufficient to secure League approval of a transfer.

The CHAIRMAN. Thank you, sir.

Mr. Stern.

Mr. STERN. Mr. Chairman, members of the committee, the NBA appreciates the opportunity to present our views.

I do not believe that there is a more fundamental concern for a professional sports league than the selection of the markets in which its teams operate. We are engaged in intense economic competition with other leagues and collegiate sports and other forms of entertainment, and all members of our league have a vital interest in selecting the locations in which we can best compete.

But in order to encourage fans to make the significant monetary and emotional investment necessary to the success of an NBA franchise and to promote team stability, we have strongly discouraged the movement of franchises. Indeed, during the past decade the NBA has approved only two moves of a franchise to a new territory, and then only after a showing of a financial crisis or possible financial ruin from continued operations in those old markets of those teams.

However, the recent decision in the so-called Oakland Raider litigation truly has thrown the entire issue of franchise relocation into turmoil, and that has engulfed the NBA, along with other professional sports leagues. Last month the Kansas City Kings requested approval to relocate for the 1985–86 season and last May the San Diego team simply moved to Los Angeles without even seeking NBA approval.

As a result of the Clippers' precipitous departure from San Diego, we are now involved in a prolonged and very costly litigation in which we are seeking a declaration of our right merely to consider the move—not to keep them any place, but merely a declaration that the NBA has a right to consider where its teams should be located.

The Clippers, represented by the same attorney who was involved on the plaintiff's side in the *Oakland Raider* case, advised

us, No. 1, that it is illegal for us even to consider the move and, number two, that starting of a lawsuit to get a declaration of whether we are allowed to consider it or not is itself an independent antitrust violation.

The more recent request by the Kansas City Kings to relocate demonstrates the straitjacket that the *Oakland Raider* case has put professional sports leagues in. In accordance with our current procedures, we have appointed a committee to study the move and whether the move meets certain criteria.

The criteria which the NBA now has enumerated, very specific and objective criteria, include: one, whether the proposed new location can support an NBA franchise; two, whether the applicant has demonstrated that it can operate successfully in the new location; three, whether the proposed new location will have an adverse effect upon the NBA's ability to market basketball; and, four, whether the proposed new location presents particular disadvantages for the operation of an NBA team, such as the creation of travel or scheduling difficulties.

You will note that absent from our criteria are any detailed examination of the manner in which the team's present market has given its support and the appropriateness of abandoning that market, since there remains doubt under the Oakland Raider opinion as to whether such factors may be properly taken into account by a professional sports league.

We believe that any consideration of a proposed franchise relocation should, on the basis of both fairness and good business judgment, involve a thorough examination of the interests of the market the team proposes to leave. And I believe that Senator Lautenberg would agree that that would be appropriate. Even though we want to encourage cities to go out and solicit teams, we certainly think that fairness and good sense allow some consideration to be given to the city which a team proposes to abandon.

But we believe, further, that under the *Oakland Raider* case we are not permitted to do that, or at least a question is posed on the issue, and if you were an owner considering that issue and your lawyers were telling you that if you vote on the basis of objective criteria and you decline to give permission you are going to be subject to perhaps as much as $70 million in antitrust liability, number one, you would be disbelieving that that could possibly be, but, No. 2, the Oakland Raider litigation would be presented to you by your lawyer and you would become a convert.

You would probably allow teams to move virtually anyplace. Thus the chaos and turmoil that has been created.

We believe S. 259 is an appropriate response to these unfortunate circumstances. As we understand the bill, it affirms the right of a professional sports league to consider and determine in a reasonable and responsible manner whether to approve the relocation of their franchises. The bill wisely provides that the league may consider such matters as the adequacy of the existing arena and related facilities, and the extent to which inadequacies may be remedied, and the existing level of public support—all of which we believe are relevant and important issues.

Subject to clarification of what we see as certain procedural and jurisdictional ambiguities, some of which were referred to by Mr. Foreman, we endorse the enactment of S. 259.

I would like to make a point here, one additional point. The absence of such legislation will not imperil the survival of the NBA. All it will do is preclude the NBA from giving cities which currently hold NBA franchises the just and fair consideration they deserve in the event their franchises propose to relocate.

We are not in favor of legislation which would involve the creation of a Federal board or agency as proposed by S. 287. That raises issues of whether professional sports should become public utilities or perhaps whether the Federal Government should step in and buy all those professional sports teams in order to keep them in their communities. I have some owners who would be glad to come down and negotiate that issue with Senator Gorton.

But until that time I think that professional sports leagues are private enterprises with substantial accumulated losses, which we again would be happy to share with the committee on a confidential basis, although they have not been that confidential in terms of press reports of the NBA's operations over the last several years.

I am happy to report that the situation is changing, and when it changes completely so that we have 23 profitable NBA franchises, or at least some number close to that instead of just the majority that we now have, expansion will be an appropriate step at that time. I think you would agree that simply to announce expansion without regard to the underlying business justifications or considerations would be foolhardy for a solid business—and we think that we are a solid business.

We thank you very much for giving us the opportunity to present our views.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS THERETO

Question 1. For each team, and the National Basketball Association as a whole, for the regular season, and for post-season play, please provide the following expense and revenue data for the last complete year: Gross revenues, local television revenues, local radio revenues, home gate receipts, away gate receipts, parking revenues, national television revenues, and national radio revenues; and gross expenses, player salary costs, stadium rental costs, advertising costs.

Answer 1. The requested financial information, with respect to each NBA team, to the extent it is even in the NBA's possession, was provided to the NBA by its members in complete confidence and with the understanding that this information was to be solely for the use of the NBA and its member teams. Moreover, we do not see the relevance of this information to the Committee's investigation.

Question 2. (a) Please describe any arrangement for sharing of revenues within the National Basketball Association. (b) What proportion of total revenues of the NBA is shared? (c) Representatives of the NFL maintain that the sharing of 97% of revenues in the league has been critical to maintaining the economic health of the league. Assuming the NBA does not share such a high proportion of revenues, can you explain why such a high degree of revenue sharing has not apparently been essential to the economic health of basketball?

Answer 2. The NBA teams share the following revenues on an equal basis: (i) Network television revenues; (ii) Network cable revenues; (iii) 45% of net playoff gate receipts; (iv) Net All-Star Game revenues; and (v) Compulsory license fees. In addition, each team contributes 8% of its net gate receipts from regular season games to fund the operations of the League.

Question 3. Do you believe that there is any relationship between the fact that baseball is the only sport granted exemption (by judicial decision) from the antitrust laws and the fact that baseball has faced no threat of a competitive league on a scale of the threat that the AFL posed and now the USFL poses to the NFL or that the World Hockey Association posed to the NHL or that the American Basketball Association posed to the NBA?

Answer 3. No.

Question 4. (a) Do you agree that if the ABA did not merge with the NBA, there would have been increased expansion of basketball, as the two separate competitive leagues vied for markets? (b) What would be your view of legislation that forced the split of the NBA into two competitive leagues, if the split enabled each league greater freedom, under antitrust law, to make joint decisions about expansion, relocation, and the sharing of revenues, but severely limited the ability of the two leagues to make joint economic decisions.

Answer 4. The ABA did not merge with the NBA. The ABA ceased operations at the end of the 1975–76 season. The NBA then expanded by the addition of our former ABA teams.

Question 5. Do you believe that basketball (and perhaps hockey) should be treated differently from football and baseball, because the latter two sports command greater national attention?

Answer 5. The NBA believes that all professional sports should receive equal treatment under the law.

Question 6. Please provide the Committee with the corporate by-laws, Constitution and rules of the NBA.

Answer 6. A copy of the current Constitution and By-Laws of the NBA is enclosed.

Question 7. Does the NBA permit the ownership of member teams by public entities or by non-profit organizations? Have member teams ever been so owned? Do you believe that public ownership provides an alternative means of franchise protection for a community that has invested significant public funds in constructing an arena for the franchise?

Answer 7. The NBA has no restriction on the type of entities permitted to own NBA teams. We are not aware of any instance of an NBA team being owned by a public entity or non-profit organization.

Question 8. What criteria, economic studies, marketing analyses has the NBA used prior to voting for expansion of the league or relocation of teams?

Answer 8. In connection with the proposed relocation of the Kansas City Kings to Sacramento, the NBA has retained a consulting firm to analyze the suitability of Sacramento as the location for an NBA team.

The CHAIRMAN. Thank you, sir. Mr. Usher.

Mr. USHER. Thank you very much, Mr. Chairman.

Members of the committee, I am Harry Usher. I am the commissioner of the United States Football League, and have served in that capacity for 4 days, going on 4 years, I think.

The United States Football League consists of 14 member teams, 9 of which are located in non-NFL cities. The problem which is being addressed by this committee I think has been well stated by Senator Lautenberg. The problem is one of scarcity. It is that scarcity which is generating the control and demand of the various NFL clubs, that is actually placing the cities which are either luring them or the cities that are trying to retain them in a position of being hostage to the power and strength of those clubs that has generated over the past 15 years of their status in our United States.

I think it is important to understand how that was arrived at. In 1959 and earlier, each of the individual clubs of the NFL negotiated television rights individually for their games. In 1959 the American Football League, then an entirely separate and distinct league, negotiated a pooled arrangement with the NBC network for the telecast of their games.

In 1960 and 1959 the NFL, in response to that, negotiated a pooled arrangement with CBS. At that time we had one separate league with CBS and one separate league with NBC. Judge Grimm, in a suit, the *United States* v. *National Football League* in 1961, said that the pooled arrangement of the National Football League violated the antitrust laws.

As you may recall, immediately thereafter Congress enacted, in 1961, the Sports Broadcasting Act. That act permitted an exemption from the antitrust law for pooling the television rights of the various member clubs. That was fine; it protected the small cities. It also protected the fact that we had two competitive situations—the American Football League on one network, the National Football League on another network.

In 1966, however, an agreement was reached to merge the AFL and the NFL into one entity, and the consummation of that was about 1969. What happened is that the television agreements in turn merged, so you had one league now dealing on two networks. Immediately thereafter, an agreement was reached between the NFL and the ABC network. Now that is 1970.

For the past 15 years, we have had a situation where there has been one professional fall sports football league, and in that 15-year period we have had two expansions of it, in 1974 with Tampa Bay and Seattle. It has been absolutely impossible for any competitive league to be able to compete in the fall, during which time all of the revenues from television and all of the fan attention for professional sports, for football, is generated.

That has resulted over this 15-year period in the development of one of the great economic and emotional factors in our society today, which is the National Football League. That power and that concentration, which has been authorized by Congress under two antitrust exemptions, is basically tying up the very means of commerce under which other cities and other franchises can develop a competitive league.

I guarantee you that if there was a situation that could develop in which the network exemption for the pooled negotiations by the NFL were limited to one or two networks, leaving one or two networks to be able to negotiate with the United States Football League that the pressure for transfers and the pressure for having either the city keep the franchise or grab the franchise away from the other city would lessen dramatically.

As Senator Lautenberg pointed out, the problem is scarcity. All you do with these acts is further enshrine the problem. You can put a lid on it, but it is going to fester and it is going to grow, and that pressure is still going to exist. What needs to happen is that the free marketplace has to exist again.

It is the antitrust exemptions that have created this enormous monopolistic bloc right now. I was trying to think how to dramatize this, and I was wondering if any of you knew who won the United States Football League championship last year. I can tell you it was the Philadelphia Stars. The Philadelphia Stars are now going to start playing football in 2 weeks as the Baltimore Stars.

When they left Philadelphia, there was an incredible, deafening silence. When the Eagles said they were going to leave Philadelphia, what happened is that the taxpayers of Philadelphia are

going to end up mortgaging the future to try and keep the Eagles there.

What is the difference? The difference is purely and simply a situation where the monopolistic position of the NFL, together with tying up every single one of the three networks, is creating an impossible entry position for any other competitive cities or competitive league.

That can be rectified very easily without modifying in any way the standard procedure under which these teams are competing and doing business—quite simply to condition the 1961 Sports Broadcasting Act exemption to the antitrust laws on permitting a league to negotiate with only one or two networks, leaving the other network free, or the other two networks free to be able to negotiate with the competitive league.

In other words, a return to the AFL–NFL situation, where, as Mr. Rozelle says, they doubled suddenly, the expansion. Well, that doubling took place primarily in the merger of these two leagues that were allowed to get together because they had a city identification that was of interest to this Congress.

In closing, I think the problem can be resolved quite simply by letting the private sector and the marketplace determine these things. If that is allowed to happen, then the compulsion and tremendous pressure to transfer franchises from city to city will abate and a lot of the need for this will go away.

Thank you very much.

The CHAIRMAN. Thank you very much.

Mr. Ziegler.

Mr. ZIEGLER. Thank you very much, Mr. Chairman, members of the committee.

I join with my colleagues in thanking you for the opportunity to address an issue that I think the others have pointed out is probably one of the most crucial not only for professional sports but the communities in which we play, the communities with which we are identified.

The National Hockey League is a rather small business compared with the National Football League and baseball and basketball, but I would suggest our impact on the community and our citizenship there is no less important to those communities.

Just recently, the controller of Nassau County, where the New York Islanders participate and play hockey, was quoted as saying in an interview that his estimate as to the value of the New York Islanders being in his community approximated $55 million to $60 million per year for that community. In addressing a new lease which the Islanders had just undertaken with the Nassau Coliseum, if you project that into the future, that is $1.5 billion alone to that community.

That is not just the only place where we reach the identification of the community spirit that a team creates. I think my good friend Earl Foreman would perhaps agree with me that when the Philadelphia Flyers won the Stanley Cup that turned the pride of that city and it is now a very prideful city of champions.

Thus, Mr. Chairman, your recognition, and your colleagues', in bringing forth this bill, that there is a great identity of interest, an interlocking of interest between professional sports teams and the

community is a concept and a principle that the National Hockey League enthusiastically endorses. We compliment yourself and the committee for recognizing that this is such an important problem to the public and to our little business.

The National Hockey League is a bit unique when it comes to transfers. In our basic contract, our league constitution, it very clearly says you shall not transfer a franchise from one location to another. When you come into the league, you make this agreement. We will not transfer a franchise. Over the years we have had to amend that constitution on an ad hoc basis when, after a team has tried and has lost millions and millions of dollars, we have permitted a relocation, but only after we have gone through the considerations and the criteria that have been suggested in your bill, Mr. Chairman, criteria which we think have been well thought out and which we can endorse.

Most recently we have found ourselves in the Hobson's choice that the NFL found. We have had a team in the city of St. Louis since 1967. The ownership there made a business decision that they no longer wished to be in the hockey business, a decision which certainly any business is entitled to do.

They then went and made a contract with some entrepreneurs from Saskatoon, SK, to move the St. Louis Blues to that location. They had a good contract for sale. The entrepreneurs were going to finance the building of a new building and the support of that team by a $47 million public offering in the Province of Saskatchewan, which had a total population of 1 million people.

We went through the process as suggested by the bill, Mr. Chairman, of reviewing whether or not, first of all, the city of St. Louis should be abandoned and, secondly, whether or not a National Hockey League team could really be supported in the Province of Saskatchewan, in the city of Saskatoon of 150,000 people.

In that process we looked at the fact that the people of St. Louis had spent approximately $55 million just in gate receipts alone to support that team. We were told by the ownership of that team that unless we approved it we were going to be sued, sued under the antitrust laws, and we were going to be penalized by treble damages for not going along with their wishes.

Now this was not an ownership that wanted to continue in the hockey business. It was abandoning it, and they said either you support our abandonment or you are going to be penalized threefold. It was a Hobson's choice, but we felt we had a responsibility to the community which had supported our business and supported a team there, and even with the Davis case right in our face we said no, that is not right.

We were sued, just as we were promised, and we are undergoing extremely bitter, extremely expensive litigation. Now we are prepared to be tested by the elements of fairness, such as in your bill, and we would like to see that apply. We will be filing a written statement with our specifics, Mr Chairman.

We would like to see that bill retroactive. We would like to see some provision for attorney's fees for frivolous appeals, and we would like to have the refusal to permit it to be judged on the basis whether it is malicious or reckless, not just on negligence or some other simple theory.

We thank you again for the opportunity to address you. As we say, we believe we share this common interest, that we must have some basis and some certainty when it comes to deciding whether a sports franchise can just pick up and leave a community that has supported it. Thank you.

[The statement follows:]

STATEMENT OF JOHN A. ZIEGLER, JR., PRESIDENT, NATIONAL HOCKEY LEAGUE

Mr. Chairman and members of the Committee, the National Hockey League appreciates the opportunity to present this statement on S. 259 and S. 287, both designated the Professional Sports Team Community Protection Act.

The NHL strongly supports the intent of these bills—to ensure stability in the location of professional sports clubs. The NHL believes that the public interest of the fans and localities coincides with the NHL's interest. Each wants clubs to remain in their home area. The NHL's record on club movements, particularly our recent refusal to allow the St. Louis Blues to move, illustrates our intentions.

Mr. Chairman, we believe federal legislation is required in this area to assist sports leagues in insuring such stability, free of the intimidation of expensive protracted litigaton. Establishing a cumbersome, costly (to tax-payers) and time-consuming process of review of proposed transfers by a quasi-governmental agency, as called for in Senator Gorton's S. 287, is not the answer. Rather sports leagues should be given the freedom to refuse to permit a club to move without fear of the harrassment of having to defend antitrust suits. Both the NHL and the National Basketball Association have refused to permit moves—exactly what the legislation is aimed at—and are now in Federal court defending themselves for that refusal. Although the NHL believes it has not violated the antitrust laws, it must nonethless undergo expensive litigation costs to defend its positon. A clear grant of limited immunity from the antitrust laws to permit professional leagues to say "No" to moves would ensure the stability Congress is seeking without the need for governmental action.

Mr. Chairman, right now professional sports leagues are operating in treacherous waters with regard to territorial stability of their franchises. The Hobson's Choice confronting a league today is whether to permit a franchise to hopscotch around the country at the whim of its owner or to deliberate and vote as to the appropriateness of the move and be prepared to defend itself in court, as we are doing in St. Louis and the NBA is doing in San Diego, in the event the move is not approved. This is not a process conducive to stability.

The National Hockey League was founded over sixty-five years ago and has grown from six clubs to twenty-one. Whenever the League expanded its reach into a new area, it tried to ensure that the new club had quality local ownership committed to that area. In most cases we have been successful. In four instances, however, circumstances have required that NHL clubs be permitted to move from one city to another. All have occureed since 1976. In each case the moves were abssolutely necessary to avoid bankruptcy of the ownership entity.

The National Hockey League's position on moves is the same as the fans, localities and yours: We do not permit a move except in emergency situations. Our Consitution provides: "No member shall transfer its club and franchise to a different city." If a club wishes to move, the League Consititution must be amended and this requires a unanimous vote. Every club must be convinced that a move is absolutely necessary. The League fells that strongly about movements and their effect on our relations with our communities and the fans that support NHL clubs.

THE ST. LOUIS SITUATION

Approximately two years ago in Spetember 1982, Gil Stein, Executive Vice President and General Counsel of the NHL, testified before the Senate Committee on the Judiciary in support of Senator DeConcini's bill, S. 2784, which has been reintroduced in this Congress as S. 298. That bill gives each league free control over sports team relocations. At that time Mr. Stein stated:

"The issue of franchise relocation, while dormant now, may someday have to be faced by the NHL again. The League would like to face this task, if necessary, responsibly and with some certainty that we will not be subject to antitrust suits and treble damage awards no matter how we may resolve any future situation. We would like to be able to handle it as a league rather than permitting one person to circumvent the rules he agreed to in joining our enterprise."

Unfortunately, Mr. Chairman, those words were prophetic. Shortly thereafter, Ralston Purina Company, the owner of the St. Louis Blues, sought to sell and transfer the Blues to a group in Saskatoon, Saskatchewan, Canada. The League denied that application and found new ownership for the Blues who would keep the club in St. Louis. As a result, the St. Louis Blues Hockey Club is today alive and well, continuing its historic role as part of the infrastructure of the great city of St. Louis. Attached to this statement is a May 4, 1984 editorial from The Hockey News regarding the St. Louis situation.

We firmly believe that by refusing to permit the move and obtaining new ownership committed to success in St. Louis, the League acted just the way this Committee would want us to act—responsibly. We did this because our interest is the same as yours and the fans—stability. But now we are faced with the expensive chore of defending a $60 million antitrust suit.

Professional sports leagues should be given the freedom to act in a reasonable manner without the fear of legal intimidation and harrassment. Leagues must be exempt from antitrust claims by member clubs for failure to approve franchise relocations. Such protection would deter approval of moves that were not absolutely necessary.

CONCLUSION

Mr. Chairman, the NHL supports the policy of stability underlying both S. 259 and S. 287. The NHL is committed to franchise stability. S. 287, however, calls for unnecessary quasi-governmental authority to review potential relocations. The NHL feels that S. 259, with a few changes, would better serve the public interest.

We understand that S. 259 is intended to insulate from attack under the antitrust laws a league decision denying a move. A League should have the right to prevent a club from moving, a right that is now in question under some lawyers' interpretation of the antitrust laws. That limited antitrust immunity should be more explicitly stated.

S. 259 also permits a review of "the fairness" of any league decision by a U.S. District Court, permitting a decision to be set aside if it was not supported by "substantial evidence." Although we do not mind litigating the question of whether we have acted fairly, even the threat of this litigation could enable an aggrieved owner, stadium or locality to affect a league decision out of fear of high legal expenses. We suggest that a provision be added permitting the District Court Judge to award attorney's fees to the party prevailing on appeal if the appeal was adjudged frivolous or inappropriate. This would chill potential nuisance suits.

Finally we suggest it is appropriate to provide immediate relief to parties such as the NHL who have acted in the public interest by giving retroactive effect to the bill's clarification of the public interest and intent of the antitrust laws, thereby cloaking such parties from further exposure in current or pending, but not yet completed, litigation such as the Ralston Purina lawsuit against the NHL in St. Louis.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Ziegler.

Mr. Hadden, your position is that baseball is now in a unique position. That is, that baseball does have a recognized antitrust exemption and it can pass on the ability of a team to relocate and, therefore, we do not have the situation in baseball where a team owner on his own can make a decision to pull up stakes and leave; is that right?

Mr. HADDEN. That is correct, Mr. Chairman. I would cite as a perfect example of that a reference Senator Kasten made earlier in the day here, referring to the situation in Minnesota, where this committee held hearings a year or so ago and there was public speculation as to whether or not the Minnesota team would be on wheels down to the Tampa Bay area.

Dr. Bobby Brown, president of the American League, appeared before your committee at that point and gave what in effect was quite a firm pledge that baseball was not going to tolerate that. There was a disapproval or refusal to approve the purchase of a substantial minority interest on the part of some interests from

Tampa, and in due course, with intimate cooperation of the commissioner's office and Dr. Brown, a purchaser was identified in the Minnesota area.

I think it is well understood that had that franchise been left by our business as sort of a franchise free agent, to use a football term, it would have been able to be sold elsewhere for substantially more money than was the case in Minnesota.

The CHAIRMAN. But it is your view that baseball now has the ability to prevent such moves and if it ain't fixed, don't broke it—I mean, if it ain't broke, don't fix it?

Mr. HADDEN. We subscribe heartily to the corrected version of that, Mr. Chairman.

The CHAIRMAN. With respect to this concern expressed by Senator Lautenberg about the have-nots and the concern that if we pass legislation, such as S. 259, that will freeze in the status quo. All of you might want to address that question again.

Mr. Usher feels, as I understand it, that the situation in the other sports leagues now with extending antitrust exemption would militate against expansion and the ability of other cities to have sports teams. Why does not the ability to pool revenue in effect mean that you are not going to expand? Why does not the ability to pool revenue mean that even teams in small cities now are pretty well locked into those cities, if we have such legislation that we are not going to have expansion?

Senator Lautenberg has expressed a concern. Senator Gorton in his bill, which would mandate expansion, attempts to get at that problem. But I would like you to expand on it, if you will, because it is clear to me that the concern of Senator Lautenberg is the greatest single hurdle we have to passing the legislation.

Mr. ROZELLE. Because of the past, what we have done. We had revenue sharing in the early 1960's, when Dallas and Minnesota came in. We had revenue sharing and took the dilution when Atlanta came in. We had revenue sharing when Cincinnati came in after the merger. We had revenue sharing when Seattle and Tampa Bay came in in 1974, for activation on the field in 1976.

We had revenue sharing then. But we found that it helps us to expand and hit new parts of the country. We indirectly become—it is synergism. We get bigger than our number even. We get a more popular league, more popular with the public, and we have never hesitated to expand except at periods when we have great instability, and that is what we have now, as the others have commented upon.

If we can know what the future holds from the standpoint of being able to expand, being able to not have owners individually, against league votes, go off on their own, creating chaos, if we can eliminate that we will expand, because we have done it in the past.

The CHAIRMAN. Well, if you represented, say, Arizona or South Dakota or any State seeking professional sports teams, would you want to vote for or against this bill, S. 259?

Mr. ROZELLE. As an owner, if the city we were expanding to is in Arizona, I would be reluctant to vote for expansion because the USFL is suing us for $1.3 billion. It is a baseless suit, but if we go into one of their cities, which Phoenix is, then they have got at least one thing they can lay on that suit.

South Dakota. I do not know the size of the State.

The CHAIRMAN. Do any of the rest of you want to respond to the general question?

Senator Lautenberg.

Senator LAUTENBERG. Mr. Usher, did you want to respond?

Mr. USHER. I just wish to observe that again the problem, as I noted, is one of scarcity, as Senator Lautenberg said. If you look at the last 15 years that the NFL has been on all three networks, the expansion has occurred exactly two times, one to Tampa Bay and one to Seattle, in 1973, effective in 1974.

So over a 15-year period, over that time, the pressure has grown and grown. As I indicated before, if you look at the teams and the cities that we are in—Memphis, Birmingham, Jacksonville, Phoenix, Baltimore, Oakland, and the like—a lot of these cities are ones who have applied for and been rejected by the NFL year-in and year-out for expansion.

That rejection was certainly during a period of time when it was believed that the antitrust laws were not violated by prohibiting moves. That was a relatively unexpected decision in 1982 by the court in the Los Angeles area. So I am not sure that there is any given that there is going to be a great expansion if the proposed legislation obtains. I think rather, as Senator Lautenberg said, the root problem has to be explored. What is it? It is scarcity created by an artificial exemption to the antitrust laws that creates a monopoly the power and pressure that is now surfacing on the Congress floor.

The CHAIRMAN. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Several of you have identified your problems as similar to other businesses, Mr. Rozelle in particular, but there is a difference, in my view. The computer chip ads manufacturers have not been able to get together and say OK, listen fellows, we are staking out our territory and all of you who are now members of the association, you are going to be the only ones allowed to sell the product. Others who want to make it can make something inferior or less attractive, but we want to keep the ball game, as they say, in our own back yard.

Nowhere do I hear in these discussions a mandate for an owner to do what he has to do in any other business, and that is step up, be competitive, get out there, advertise, be aggressive just like any other business. If you have a product you want to sell in manufacturing or service or banking you have to get out there, offer the customer something different.

But the pressure is off, and I think, Mr. Rozelle, in your case, Mr. Hadden, in yours—perhaps, Mr. Stern and Mr. Foreman, you have a different problem; you are still building a business or an industry—but the pressure is off for good management tactic.

Very few businesses, very few, except if you are the only employer in a small business area can hold the community hostage and say OK we are going to move out unless you do thus and so. Almost no other industry that I know of has the same privilege as you have and you ought to have to, for better or for worse, and it seems to me for better, become part of the community.

I would ask you, Mr. Rozelle, have any franchises, to your knowledge, ever been sold at a loss from the price that the owner paid for it?

Mr. ROZELLE. Not since the time I have been Commissioner. I am sure we did in the early days, before the league developed.

Senator LAUTENBERG. That is modest of you.

Mr. ROZELLE. They had 44 franchises fold—in the early days, I am talking about, up until about 1952—fold or be forced to move. But not in the last 25 years, to the best of my knowledge.

Senator LAUTENBERG. So your arrival and, of course, I guess some better opportunities for television exposure were coincidentally good factors.

Mr. ROZELLE. Well, I am only aware of the last 25 years, which is why I comment on that, you see. I know the sales prices during that period.

Senator LAUTENBERG. Mr. Stern said something about sharing the losses. We do. We all share the losses that the teams experience, that is, the taxpayers give up something out of their revenue stream when you take a business loss just like any other business, of course.

But have you, Mr. Hadden, known of any sales in baseball, where there have been losses to the owners in that transaction?

Mr. HADDEN. As I sit here this morning, Senator, I cannot put my finger on one. I think there may have been one or two. If you would like to have us research that more carefully and respond to it, I would be happy to do that.

Senator LAUTENBERG. Well, I would like to have that information. The same, Mr. Stern, for the NBA and, Mr. Ziegler.

I think everybody is entitled to make a profit, but I think the conditions, to use the expression, have to be a kind of a level playing field, as we say. When we examine here the protection that is given some of the leagues, we see it can include the protection, as Mr. Usher I think said, of having a lock on the communications media, TV.

When we at home sit and watch the games, those of us who do stay home and watch them, we watch those that have the most attention called to them. And when it ultimately leads to a playoff that everybody is going to be looking at, if you are not in the group that is going to be included in that playoff you are out of touch and you are out of money.

Mr. Hadden, last year in our hearings I submitted a question to James Fitzpatrick, who spoke on behalf of baseball. I asked him why New Jersey was left out of major league baseball, why it did not have a team to call its own. I was very unhappy with his response. He said, and I quote him here:

> Baseball feels quite strongly that New Jersey has not been left out. Rather, baseball currently provides New Jersey residents access to ball clubs which they can follow and whose games they can attend, and those franchises are the New York Yankees, the New York Mets, and the Philadelphia Phillies.

I guess you could say the same for Washington, DC, that people here can drive to Baltimore or the same for Oakland people, who can drive to San Francisco. Is baseball telling a State like New Jersey when it comes to expansion, do not hold your breath, you do not need it?

Mr. HADDEN. I do not think that is the message, Senator. The real message is that baseball, when it addresses, as it will very quickly do, the subject of expansion, will evaluate the credentials, the economics, the pluses and minuses of New Jersey, along with all of the cities and locations that are interested in major league baseball.

At the moment it perhaps is worth observing that there is no stadium that I know of in New Jersey that is a suitable facility for baseball, although measures are being taken currently to address that.

Senator LAUTENBERG. We are working on that.

Mr. HADDEN. Well, I do not think that is the message. I think we are going to give full and fair consideration to New Jersey.

The CHAIRMAN. Thank you, Senator Lautenberg.

Senator Long.

Senator LONG. Let me address myself to Mr. Rozelle. Mr. Rozelle, personally I think you made a good statement and I want to just go on record that I am opposed to the free market operation of that league. I know what would happen. You would just go on a complete free market basis and that Los Angeles area and that New York area would hog up all the money and when we would put a team out there to play, I do not care how much sacrifice we make down in a city like New Orleans, we would just get stomped from now till kingdom come.

I would not live long enough to see us have a winning football team in New Orleans. And as far as the ordinary citizen is concerned, that is how it would be. Did you not some years ago really give us a bad time when your owner down there, a guy by the name of Parks, I think, a free agent, that you had a rule at that time that said he had to make some arrangements to compensate the other teams if he went out there and wrapped up the free agents without considering the rights of others?

I believe you said at the time that some previous league had permitted that type of free seeking of talent and the league failed. It went under. But would you explain what that problem was?

Mr. ROZELLE. Another league that failed? What you are speaking of is——

Senator LONG. That there had been a previous football league that started out and tried, and I think had one team in it that was in a position to pay whatever it took to get the talent and the result was that that team got so dominant that no one was interested in seeing the game.

Mr. ROZELLE. That is just what happened in the All-America Conference, which operated from 1946 through 1949. The Cleveland Browns were so dominant that during that 4-year period their attendance even went down because they won too much, and the league was destroyed by the dominance basically of one team. Subsequently, three of them merged with the NFL, but that is what happened.

Now the period that you are speaking of on Dave Parks with the Saints, that was a period during which I had the responsibility of determining compensation. Since that time it has been changed to collective bargaining and draft choices are used in a formula for compensation.

Senator LONG. But as I understand it, insofar as you have had the situation as Commissioner of the NFL, you have tried to see to it that each team will have a fair chance to compete with the others, regardless of whether one was located in Los Angeles and the other was located in New York or another located in Green Bay, to the end that over a period of time even the smallest community or smallest city in the NFL would have a chance.

Mr. ROZELLE. That is absolutely correct. On Senator Lautenberg's story, over 90 percent of the money in the NFL is shared in some form or another. As an example, the gate is shared when the Giants play in Giants Stadium. They get 60 percent. After expenses, they get 60 percent, and the visitor gets 40 percent. That is to give the home club some incentive to promote, which they do.

Television is shared evenly, as you know. It accounts for about 60 percent of our income. And the primary goal, something I believe that baseball is touching on right now, is a greater sharing of revenue. I think you must have read that those clubs on superstations are getting an inordinate amount of money compared to the other clubs in the league. This is just what I read. And now they have made an agreement to extract from the clubs on superstations a certain amount of money for the other clubs in the league.

Senator LAUTENBERG. Mr. Rozelle, you better address yourself to my colleague, Mr. Long; otherwise, I will get drawn into the debate here and the Chairman will overrule me.

Senator LONG. I would just as soon that you keep it between us and let Mr. Lautenberg take his turn. Thank you.

Now I recall when the Governor of Louisiana and others came before the NFL and they were pleading at that time that the NFL franchise a team for New Orleans. I recall the Governor of Louisiana was pretty expansive—it was John McKeithen at the time—and he said that if you authorize or you charter a team down here and put a franchise in New Orleans, we will build a sports facility for you to play in down there.

I really think he went a little too far. He said we will build a domed stadium big enough that you could put the Houston dome stadium in our end zone. As I recall it, that is the way he explained it at the time. But there was no doubt that it was a better one that they had. It was the best in the world at that time.

Can you tell me about what Mr. Mecom paid for a franchise at that point—just a rough guess?

Mr. ROZELLE. Sure. He came in about the same time as Atlanta. I think each of them paid about $8.5, $8.6 million.

Senator LONG. Well, I heard $6 million somewhere, but I would not quarrel with you at all. It just illustrates my point. Now the people in the community just paid about $200 million, and that would be more than that today. But the same type dollars he paid, we paid $200 million, and that stadium is not designed for soccer. It is not designed for basketball. It is not designed for baseball. That stadium is designed for people to go out there and see football played.

Was that not at that time the best facility in the world for playing football?

Mr. ROZELLE. Yes.

Senator LONG. There was not any doubt about it, was there?

Mr. ROZELLE. No.

Senator LONG. A friend of mine had a 14-story office building somewhere in the area. He told me that you could put his office building inside and it would not even touch that gondola up there that replayed the football plays after they played them.

Now we thought at that point that if we did all this and put our name on the contract that we could count on the NFL to perform as it had in the past. You indicated that where the people support a team for 62 years that they could count on a well-supported team staying where it was, and you told us at the previous hearing a year or so ago that you would have respected that.

You felt you had an obligation to the people down there. But now there are the court decisions, which no one could foresee at that time. You are powerless to do anything to perform in good faith, as those people had a right to expect.

Mr. ROZELLE. That is correct.

Senator LONG. So that if we want you to do the right thing, we will try to give you the power to do it.

Mr. ROZELLE. You give us the tools, and we will handle the problem, I assure you.

Senator LONG. Well, that seems fair to me.

Now as far as our people are concerned, I think we have got a pretty good record. I was dismayed that we lost money on our World's Fair down there. It was unfortunate. I think you are looking at the largest individual loser. I think I would sign up and took a beating for more than any single person. I did not realize it. I thought I have gone overboard until I looked around and saw how the others had managed to spread their risk.

But, to just show you how that area has come through in good faith, the Governor of that State down there called a conference and said that the fair was running out of money and they would not be able to open. He provided the leadership to come up with $10 million to help them in the beginning. Later on, when the thing went sour again, he came up with another $16 million. He fought very hard to do that.

Now that is a good indication of good faith on the part of the leadership in Government and I think the mayor of New Orleans was cooperating in that, too. But that is an indication of what people have done in good faith to help where they felt that they had sought or in some wise committed themselves to an undertaking.

And even now it is my understanding, and I think you mentioned this, that if there is any problem about the money the State is willing to do its part to help see to it that it is a good deal for all concerned. But the problem we have is that we do not see how we are going to be able to have people do business in good faith with us if we do not give you the authority to do what you thought was fair and what I believe you thought you were committing yourself to when you authorized that franchise down there.

Is that correct?

Mr. ROZELLE. That is correct. In the *Los Angeles* case, we spent in the first trial more than three-quarters of our time keying to the public interest that we were trying to protect in Oakland. They were the third-highest revenue producer in the league. They had 12

straight years of sell-outs. And we had a committee look into it very quickly and there was no criteria by which they should have been allowed to leave.

But when we lost that case, we lost the ability to control the relocation of teams. The other commissioners have had similar problems. They have litigation themselves. And as long as we had control, voting control, of a transfer we have not had movement from a home location where they have been well supported in 62 years.

Senator LONG. Thank you very much. I hope that you and your attorneys, whoever you have representing you up here, will make whatever suggestions you can about the matter because I would think it very unfair for people, having done everything that was expected of them, to the tune of hundreds of millions of dollars, that others cannot fulfill in good faith because of unanticipated court decisions.

Now with regard to this new league, and I am sure they have a right to compete, and bless them, that is fine as far as I am concerned, but in fairness we do not want to start all over again. We have had a losing football team for a long, long time. Can you recall how long it was? It must have been about—can you recall how long it has been?

Mr. ROZELLE. I would have to go to the figures.

Senator LONG. Well, my thought is if somebody is going to come out with a new franchise and get stomped by these big teams for a while, it ought to be somebody else.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Thank you, Mr. Chairman.

Let me say that I share some of the convictions of my colleague, Senator Lautenberg, We have many other types of businesses where a community gives the land or the local newspaper loyally supports them, or the town loyally has an appreciation day and a business decides to move.

Citibank has decided to move a major division into our State, and we would have objected had another legislature somehow blocked it. But that point has already been made very well.

I have another fundamental problem with the legislation, such as is being discussed, and that is that this committee has made a reputation the last few years on deregulation, and it looks to me as though we are getting into creating a sports bureaucracy. Once we pass legislation this subject will engross us and take us in and there will be Federal boards and Federal regulations, and it seems to be going in the opposite direction of where we have been heading in other areas in this committee.

With all the time Congress spends on this, as opposed to agriculture or budget or transportation or something, it will get to be more and more once we get into it. That bothers me a lot, this business of a sports bureaucracy. The first step concerns me greatly, and if any of you have any comments on that I would appreciate it.

Mr. STERN. Senator Pressler, the sports Federal bureaucracy that you are referring to is the one that would be created by Senator Gorton's bill. I think that everybody on this panel has firmly said that that would be a terrible mistake, to plunge the Federal Government into that kind of business.

With respect to the Eagleton-Danforth bill, the simple question to ask yourself is whether the *Oakland Raider* case is correctly decided. If in fact the professional sports leagues should not have the right to consider the city currently housing the team and should be subject to treble damages if it does and there are no public interests indicated by concerning yourself with the interests of the citizens of that city, then I think nothing should be done.

But we think, and I think, that the Danforth-Eagleton legislation indicates that sports leagues should be required to consider the local citizenry, and if they should then legislation is needed to allow them to do it.

Senator PRESSLER. We have found, of course, that basically the Eagleton-Danforth bill, would make it a federally chartered thing, that at the initial stages would not require a Federal board. But as we found with federally chartered banks eventually if there are violations and problems and issues, there has to be a Federal Deposit Insurance Corporation or something to follow up.

Would that not naturally follow?

Mr. STERN. I think not. The board is a creature under Senator Gorton's legislation and the one about which I spoke. It merely deals with leagues having rational rules, that if they are followed you will not have an antitrust violation. But obviously there is a step of involvement with the Federal Government and I think, looking at the preamble to the legislation, the reason that that is considered is because of the interest that really other members of the committee and other Members of the Congress have in protecting the citizens of the communities with which they are concerned.

That is where it springs from, not us coming here and saying we must have that to survive. We must have it if those considerations are ones that you want us to undertake in assessing franchise relocations.

Mr. HADDEN. Senator Pressler, may I add a comment in response to your question? We in baseball do foresee the creation of a considerable sports bureaucracy under the provisions of the Gorton bill. More important, in our view, is this, that with that bill drawn the way it is and with the test being almost entirely, if not entirely, a financial test as to whether the so-called offer of retention, an offer from a local community, to keep the club in town is equal to or better than an offer from another city, that the legislation, if adopted, would lead precisely in the opposite direction as intended by the Senator because it would be a red carpet out of town.

The nature of the marketplace is such that if it is a free agent franchise it can get more in other locations than is ordinarily the case in a situation in a city where it has found economic tough going. That is just commonsense.

So our concern is that not only would it saddle us with a bureaucracy and encumber the decisionmaking process, but it might well have the opposite of its intended effect.

Mr. USHER. Senator Pressler, one of the things I believe this committee must do—in fact, Mr. Rozelle in his written statement indicates—that legislation should deal directly with the source of the problem, the status of sports leagues under the antitrust laws. This is a very fair statement because unless the totality of the effect of the antitrust exemptions or immunities and the antitrust law is

looked at, the totality of whether there should be regulation or not be regulation will not be understood.

This is in a sense taking the thing entirely out of context when you are looking at one issue—the transfer of franchises. For example, when you look at the antitrust exemption relative to pooled broadcast rights, there was until January of this year a prohibition upon any kind of professional football being shown on Saturdays.

Pursuant to a letter received by the USFL from the Justice Department, it now permits us to contract on Saturday for football. In so finding the letter said:

> At the present time and under present market conditions it is reasonably necessary in order for the USFL to have a chance of surviving in competition with the NFL and thus providing additional competition in the marketplace in which broadcast rights for professional football are sold.

In other words, to isolate simply on the question of transfer and not look at what the causes are for all of this built-up pressure, we would be missing an opportunity to explore exactly what your concerns are. Do you want to have Federal bureaus? Do you not want to have Federal bureaus? Where does this all fit into the free marketplace itself?

It is suggested that a broader look will in fact indicate that some remedies, but certainly not a full regulatory one, is necessary.

Mr. FOREMAN. Mr. Chairman, if I might, I was much impressed with Senator Long's commentary concerning the plight of the New Orleans football team and the probability of situations arising where you do not have sharing of television revenues, of having that occur.

Senator PRESSLER. Mr. Chairman, it is my line of questioning. I am not through with that. This is getting back to another subject. Could I just finish with one comment?

The CHAIRMAN. Is this responsive?

Mr. FOREMAN. Yes, Senator. The whole concept—our ball is round; we do not have apparently the difficulties that the two gentlemen with the oblong balls have, but the very idea of sharing revenues with a new league with a bright future but with a new league is critical, and we cannot expand into markets. We could not go into South Dakota. We would not go into Iowa, where we do not have teams, if there were not some prospect of those people that we are asking to invest in those cities and those States, that they would have an opportunity to play in the league on a competitive level.

Because all things being equal, you only have 16,000 or 17,000 seats in an arena, and if you have franchises in areas where the dollars that are developed through the operation of their franchise enable them then to, particularly in the new league, acquire players that we cannot afford to go out into the marketplace to buy, you lose that competition. You lose that competitiveness.

So the inability to share that revenue for a newer league and a smaller league is almost fatal to its very expansion, Senator.

Mr. ROZELLE. Senator Pressler, could I comment? Again, and I will just put it very briefly, the whole key here is that the court told us we cannot take the public interest into consideration in determining franchise relocation. Apparently, the sentiment of the public, particularly those communities losing the clubs, and a large

segment of Congress feel that the public interest should be taken into consideration.

Now when the Raiders moved there was a little ripple back here. When Baltimore moved, there was a little heavier ripple. Believe me, if the Washington Redskins took the position that they have a right under the *Raider* case to move and for some reason went to Charlotte or Roanoke, I am sure we would get some action by Congress that would enable us to stop such franchise movement.

That is what it really comes down to. Is the public interest to be taken into consideration in the case of a franchise that has been well supported? Or do you have to do as the judge said in Los Angeles, just eliminate that. Eliminate all your testimony about the public interest and it cannot be taken into consideration under the antitrust laws and just drop it.

They are allowed just to go where they want to go, when they want to go. And that really is the problem.

Senator PRESSLER. Just to conclude, still there is the basic point that even under the Danforth-Eagleton bill, as I understand it, we would not be necessarily creating a sports bureaucracy per se, although I think it would come shortly. We would be legitimizing part of the existing bureaucracy, namely the sports leagues and the private commissioners would thus become quasi-public, I believe.

I see the red light is on, so I end with that.

The CHAIRMAN. Well, that would surprise me.

Gentlemen, some Senators I know have written questions. Senator Gorton had to leave. He indicated that he does have some questions which he would like to submit to you, if that is satisfactory to you.

One question that Senator Gorton asked me to specifically ask Mr. Hadden is whether you are testifying on behalf of the commissioner, or are you testifying on behalf of the league owners themselves or the league itself pursuant to some sort of vote or decision?

Mr. HADDEN. There has been no vote relative to my appearance here, but I have been asked by the commissioner to testify on behalf of himself and on behalf of major baseball.

The CHAIRMAN. Gentlemen, thank you very much.

The final panel: Mr. Doug Allen, executive director, United States Football League Players Association; and Gene Upshaw, executive director of the National Football League Players Association.

Mr. Allen.

STATEMENTS OF DOUG ALLEN, EXECUTIVE DIRECTOR, UNITED STATES FOOTBALL LEAGUE PLAYERS ASSOCIATION; AND GENE UPSHAW, EXECUTIVE DIRECTOR, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, AND PRESIDENT, FEDERATION OF PROFESSIONAL ATHLETES, ACCOMPANIED BY RICHARD A. BERTHELSEN, GENERAL COUNSEL, FEDERATION OF PROFESSIONAL ATHLETES

Mr. ALLEN. My name is Doug Allen. I am the executive director of the USFL Players Association, and I have no written testimony.

The CHAIRMAN. Why don't you withhold a second until the room clears?

[Pause.]

The CHAIRMAN. Mr. Allen.

Mr. ALLEN. Mr. Chairman and members of the committee, I appreciate the opportunity to be here with my colleagues from the other players associations. My name is Doug Allen and I am the executive director of the USFL Players Association.

I have no written testimony but would like to make a few brief remarks, beginning by saying that I endorse everything that is in the prepared testimony that Gene Upshaw will be reviewing with you in a couple of minutes.

I also would like to say that I was very impressed with Commissioner Usher's statements. It is certainly refreshing to be able to come before you as a players' association representative and agree with the commissioner. If his views on labor relations are as enlightened as his views here today, I may be out of a job in a short period of time.

I think there are a couple of distinctions that need to be made about this legislation as it affects the players in the USFL. I think any legislative effort that deals with this whole question of franchise relocation should recognize that a struggling league or a new league trying to get off the ground has a different set of problems from an established league with a big TV contract and an established attendance track record.

If you look at the North American Soccer League as an example in recent history, or the United States Football League as it gets on its feet—and I think it will—it is important that they have some freedom or flexibility to be able to move franchises. I do not think that, for instance, the Washington Federals would have survived another season in the District of Columbia, but I am very confident, having just come back from Orlando, FL, that that franchise will do well in Orlando.

In a new league, you cannot always tell what teams are going to take in what cities, and it takes a while to build up fan loyalty. So I would hope that you would recognize, and I know that this has been addressed in several of the bills introduced, that a grace period during which a new league or a new team would not be held accountable to these kinds of restrictions on movement would be important.

But I draw the distinction between a new or struggling league and the NFL. Also, I have some question about the mandated expansion in Senator Gorton's bill. While any players association representative wants to see expansion because it means jobs, I think it is unfortunate that that particular mandated expansion applies to specific cities, Baltimore and Oakland in particular, because those are now cities which have USFL franchises. I think the USFL Invaders are doing very well in Oakland and I expect the Baltimore Stars to do well in Baltimore.

The Invaders and Stars went to those cities in large part because they were cities that had been abandoned by the NFL and I do not think that the United States Football League should be punished by a mandated expansion when the NFL had in fact abandoned those cities.

I also think that it is important to remember that one of the key parts of any legislation should be access of USFL teams, or any

new league, to stadia. A lease agreement that an existing team has with a stadium, which is, after all in most cases a municipally constructed and operated entity, should be available to any team that wants to use that stadium and can work out a schedule. That is not difficult to do.

Having said that, though, I think there are a couple of things said by some of the commissioners who spoke here earlier that I would take some exception to, particularly the statement made by Mr. Stern from the NBA that the Ninth Circuit Court of Appeals decision is unclear as to whether it permits reasonable rules to be established by a league to deal with franchise relocation.

I think our basic position up here is that if leagues would establish reasonable rules with reasonable majorities to deal with this question, they would be able to do so under the rule of reason test under antitrust law and that they would not be vulnerable to the kind of challenge that was made by Al Davis regarding the NFL.

If I could beg your indulgence for just a minute, there is a short paragraph in the Ninth Circuit Court of Appeals decision in the *Raiders* case decision which I think illustrates this and it says:

> To withstand antitrust scrutiny, restrictions on team movements should be more closely tailored to serve the needs inherent in producing the NFL product and in competing with other forms of entertainment. An express recognition and consideration of those objective factors espoused by the NFL as important, such as population, economic projections, facilities, regional balance, et cetera, would be well advised. Fan loyalty and location continuity could also be considered. Al Davis in fact testified that in 1978 he proposed that the NFL adopt a set of objective guidelines to govern team relocation rather than continuing to utilize a subjective voting procedure. Some sort of procedural ry, including an opportunity for the team proposing the move to present its case.

This would appear to us to provide a mechanism for leagues to deal with the problem internally without legislative review. But if legislation does become necessary in the minds of this committee and the rest of the Members of the Senate and the House, we would hope that the Congress could separate the issue of franchise relocation and revenue sharing, because we do not see them as necessarily entertwined.

We think that it would be unwise and very troublesome for the players in professional sports, as well as for the fans, for the existing revenue-sharing exemptions for sports leagues to be expanded to include pay TV and cable TV. We think it would be inevitable and inexorable that the league, in the case of the NFL, would move off of free network television and onto pay television, and then we would have a situation where it would be very difficult for the average working man and woman to get in to see the games because there is such a scarcity and it would become equally difficult for them to watch the games on TV if they had to pay $5, or $8, or $10 a pop in a pay-per-view scenario.

If there are any questions I can answer by the committee, I would be glad to do so. Thank you.

The CHAIRMAN. Thank you very much.

Mr. Upshaw.

Mr. UPSHAW. First I would like to thank the committee for inviting me here today. This subject is of great interest to all of the NFL players. I would also like to introduce Richard Berthelsen, our

general counsel, and I would save a minute or two so he can make a statement, if that is alright with the committee.

The last time we appeared here it was basically for the same reason. We talked about franchise stability. Now franchise stability is very important to us as players. We are very interested in our communities and the cities in which we play. We have a vested interest in those cities and when we are faced with the problems of relocation it is something that players as well as fans have to deal with.

One thing that I must disagree with as I listened to some of the previous commissioners, they come before you saying that they cannot do anything; their hands are tied. Well, we disagree. They do have the ability within the system right now to handle the problems of franchise relocation.

The ninth circuit has given them directions. It does not need to be clarified any more. All they have to do is adopt reasonable rules as the court suggested and they can handle the problems that face the leagues. But instead they come before you for more exemptions, more revenue-sharing, more pooling of revenues, which in turn would hurt the fans, the players, and the communities in which we all play.

We all realize that there are a lot of cities out there without teams. The have-nots are bidding. They seem to be using the sky's the limit for the multimillion-dollar scramble that is going on in the industry. Now the leagues are before you saying please give us help. We need help. Well, we have a lot of problems with revenue sharing. We feel that if the leagues are allowed to get such an exmption, no one is protected. No city is protected. No player that plays the game is protected.

I endorse what Senator Gorton is doing in his legislation. I feel that whatever is done there needs to have third-party review. We have seen the way the sports monopolies operate. We understand what they do. Even Senator Long has no real assurances that the city of New Orleans will be protected. Without third-party review, you still will not have any protection and that is what we as players, and the fans, and the communities we play in would like to see.

I have submitted written testimony and I would ask that it be incorporated in the record. I will reserve a few minutes for Richard Berthelsen, our general counsel.

[The statement follows:]

STATEMENT OF GENE UPSHAW, EXECUTIVE DIRECTOR, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

Mr. Chairman and member of the committee, my name is Gene Upshaw. I am Executive Director of the NFL Players Association. I came into professional football in 1967 and played offensive line with the Oakland and Los Angeles Raiders Football team. I have been an alternate player representative, a player representative, vice-president and president of the Players Association. All this is to say that I have had considerable experience both as a player and union officer in the National Football League.

On behalf of approximately 1,500 professional football players in the NFL whom the Players Association represent, we thank the Committee for its invitation to appear and express our views on two bills introduced within the past two weeks: S. 259, sponsored by Chairman Danforth, and S. 287, sponsored by Senator Gorton and cosponsored by Senator Long.

I appear today also as President of the Federation of Professional Athletes, AFL-CIO which represents the NFL Players Association, the North American Soccer League Players Association, the Major Indoor Soccer League Players Association and the recently formed United States Football League Players Association. I am accompanied by Doug Allen, Executive Director of the USFL Players Association, and I am proud to say we are affiliated with the AFL-CIO.

At the outset, we wish to stress that the NFL Players Association and its members have a vital interest in franchise stability and the economic viability and prosperity of professional football. Our members share many of the same interests and goals held by citizens in the communities in which they play. We believe that community investments and fan loyalty should be respected—not callously disregarded. Players plan for post football careers in their "home" communities, and develop roots there. The stability of a franchise is important in that planning. The experience of team relocation under baseball's antitrust exemption offers little reason to expect that that NFL will act to protect and respect the interests of municipalities. In fact, the NFL has already failed to do so in Los Angeles, New York, Dallas, and Detroit. Such decisions by sports owners should not be placed entirely beyond the law nor should they be permitted to be made by whim, caprice, or personal prejudice.

As a part of organized labor, moreover, the NFLPA also shares with the AFL-CIO a commitment to the principle that competition in product and service markets is the best means of assuring that the public interest will be protected. Adding any further antitrust exemption to those already possessed by the NFL and its team owners, or declaring certain conduct "lawful" without precise definition or documented need undermines the principle of free and open competition. It vests extraordinary economic power in sports cartels with whom collective bargaining already is difficult. Past experience shows it is dangerous. It is vital that any legislation in this area be strictly and narrowly drawn, and that full, impartial review of League actions be guaranteed.

The history of sports franchise movement provides no assurance at all that the sports leagues and the team owners are sensitive to the interests and needs of the communities in which they operate. In the *Raiders* case, the Ninth Circuit expressly found:

"There was evidence to the effect that the NFL in the past remained expressly noncommittal on the question of team movement. This was done to give owners a bargaining edge when they were renegotiating leases with their respective stadia. *The owner could threaten a move if the lease terms were not made more favorable*, (emphasis added). *Los Angeles Memorial Coliseum Com'n* v. *NFL*, 726 F.2d. 1381, 1394 (1984).

The record in other sports is no more encouraging.

The bills before the Committee appear to enable the NFL to require a three-fourth majority vote which the federal courts in the *Raiders* case found to be an unreasonable restraint of trade and illegal. (Prior to the *Raiders* case, the NFL required a unanimous vote to permit a team to transfer into another team's "home" territory.) The same courts have rejected the League's argument that it is a single entity and therefore not subject to antitrust scrutiny.

We oppose any legislation that would simply reinstate League control over team relocation unless it was subject to antitrust scrutiny. Any statutory language which purports to reinstate league controls and vitiates the antitrust decisions of the federal courts would be contrary to the interests of fans, the communities, stadium authorities and the players. We urge this committee not to disturb these decisions by legislation. It would be a serious mistake for Congress to send a signal to the courts that the League may enforce restrictions on team movement without satisfying antitrust requirements. In other words, we think legislation should not only spell out what standards are to apply, but what procedures and votes should govern.

Similar extraordinary majorities govern league expansion and the approval of collective bargaining agreements. We suggest that the industry be forced to justify the extraordinary majority vote as the least restrictive available means to protect the industry. Overall, we ask that Congress undertake a deep and thorough analysis of the present structure of organized team sports, the system which restricts players and their ability to sell their services, imposes artificial scarcities, and which possibly impedes collective bargaining through the imposition of an extraordinary majority vote to approve any collective bargaining agreement. Those persons who justify the present system by allegations of financial ruin or internal chaos if changes were to be made, should be asked to supply evidence or other factual data to justify existing anticompetitive practices.

S. 259, a bill cosponsored by Chairman Danforth, addresses the issue of sports team transfers, and responds to the same problems that have prompted Senator Gorton and others to regulate franchise movement. To the extent that S. 259 establishes workable, objective criteria to limit unreasonable actions by the sports monopolies, and to the extent that it provides adequate impartial third-party review of league decisions, we support the approach.

However, the bill as drafted, appears to confer unreviewable control over franchise moves to sports leagues and displaces vital antitrust scrutiny by the courts. Under the bill, judicial review of league decisions is extremely limited; the leagues are permitted to add whatever other standards they deem "appropriate", and their decision is beyond review. Also, it is not clear in S. 259 whether the rights of stadium authorities or city governments which have long-term lease commitments from sports teams will be preempted by the bill. In this connection, the Committee may wish to obtain information from the league as to the remaining term of all leases of NFL teams in guaging how to deal with the rights of lessors. We think that any rights that are obtained under existing leases should be expressly preserved and not displaced by federal legislation.

Furthermore, S. 259 adds additional antitrust immunity to sports team owners and their leagues in the areas of division of revenues and selection or termination of team ownership.

We question whether any general exemption for pooling revenues could encourage the sale of Championship games to Pay or Subscription Television and remove such games from free network television. In addition, blanket immunity to pool; all revenues will erode the ability of players to negotiate salaries that fairly reflect an athlete's true value. If, for example, an owner 1/28th of every player in the League there is little incentive for that owner to bid or to pay more for a particular athlete's services. In this respect, leaguewide revenue pooling adversely affects the salary structure of professional athletes. Revenue sharing under the 1961 broadcasting exemption has contributed to a total lack of player mobility within the National Football League. Also, revenue sharing has seriously impinged on the ability of other leagues to gain access to the networks.

Any revenue sharing proposal requires the most careful scrutiny and review of detailed financial information from the affected sports leagues, including such basic financial data as current network television contracts, gate receipts and actual profits earned from subsidiary monopolies such as NFL Films, Inc. and NFL Properties, Inc.

Under the existing revenue sharing exemption for commercial television, the NFL negotiated a TV package of $2.1 billion guaranteeing each team an average of 14 million dollars each year for 5 years. That means all NFL teams collect almost 400 million dollars from network TV alone each year. There is no justification for further private special legislation for the sole benefit of the team owners. Nor is there any justification for giving the NFL, its member clubs or any other professional sports league a blank check to divide revenues as proposed in S. 259.

Our views parallel those expressed by the Department of Justice in a letter to Chairman Thurmond dated November 29, 1982 opposing enactment of S. 2784, legislation that would have created special antitrust exemptions for professional sports teams to pool revenues and regulate franchise relocation.

While we welcome a requirement of S. 259 that a majority vote rather than a three-fourths vote should govern decisions admitting new owners into the NFL, we question whether decisions by the League should be removed from judicial review. We do not agree that the antitrust laws are not flexible enough to accommodate any special needs of this industry. The NFL is not so unique that it should be permitted, alone among all other businesses operating in the United States, to operate above the law. We oppose provisions of S. 259 which in a very real sense would simply delegate to sports team owners unreviewable powers to pool all revenues and to control expansion without having to conform to basic antitrust protections designed to preserve competition.

Unlike legislation pressed by the NFL in the recent past, S. 287 wisely does not grant additional antitrust immunity to the sports leagues. It does not simply entrust decisions on team relocation to the unreviewable decision of the sports teams or the league Commissioners. It recognizes that granting unrestricted, unreviewable powers to the team owners offers no guarantee at all that the public interest will be protected. Instead, S. 287 proposes criteria and a procedure to restrict sports franchise relocation. Its approach to limiting team relocation appears to be constructive. However, we agree with Senator Gorton, chief sponsor of S. 287, when he observed that it is unfortunate that any legislation on this subject is needed. We would therefore hope that the entire issue of franchise expansion could be addressed. The NFL's

monopoly procedures have fostered artificial scarcity and have been responsible for the spectacle of one city vying to obtain a franchise from another city. Indeed, the NFL blatantly trades expansion franchises as the currency for obtaining additional immunity from the antitrust law.

Mr. Chairman, as we have said, we fail to see any justification for requiring extraordinary majorities (such as three-fourths votes) of team owners to approve franchise expansion. Communities and fans that are prepared and able to support major leagues sports, as well as professional athletes, will benefit if expansion decisions are made by less restrictive voting requirements.

With respect to both S. 259 and S. 287 we respectfully urge that the views of athlete-employees or their representative be afforded standing to be heard, that their views considered, and that they be permitted to challenge relocation decisions. Also, we urge that another standard be added to each bill expressly providing that consideration be given to whether there are other persons or entities, in addition to the owner proposing to relocate, interested in obtaining an expansion franchise in the proposed new location. With respect to such other persons or entities, the bills should require that the leagues consider such expansion application and make recommendations thereon. We understand that the National Basketball Association franchise relocation rules include a requirement for consideration of such expansion applications. Federal legislation on the subject should encourage consideration of expansion applications in any effort to regulate franchise relocation.

Expansion clearly serves the interest of the public—particularly those communities whose desire and financial capacities can support new teams—as well as the interest of professional athletes by expanding the job market. Elimination of League restrictions that unreasonably limit expansion would further the national policy favoring market-place competition. We concur in the views expressed by the Department of Justice in January 1980 in its letter to House Judiciary Committee Chairman Rodino:

"When a geographic region is capabie of supporting more than one franchise, it is not in the public interest to allow the existing team to block entry solely to protect monopoly profits."

We would add that an extraordinary majority should not be allowed to block expansion solely to protect monopoly profits.

Mr. Chairman, each sports league is a monopoly—it has sought and received over the years special favors from the Congress. These exemptions have secured a privileged position for this industry in American business and, except for occasional private antitrust lawsuits, has permitted these enterprises to operate without answering to any federal authority. Each league has acquired superior economic bargaining positions with respect to networks, cities, stadium authorities, professional athletes and their unions. League operations under commissioner rule, in many cases, resemble a virtual private government.

We respectfully suggest that the Committee undertake an in-depth study as to how exemptions for broadcasting and merger have operated. Has the public interest been served? Are communities threatened with franchise removal unless greater concessions are forthcoming? Have consumers paid more for this product as a result of artificially created scarcities? Are restrictions on player entry and movement in the public interest? Is private antitrust litigation the optimal enforcement mechanism? Does that fact that legal costs can be divided twenty-eight ways as in the NFL, and the fact that potential plaintiffs have a short professional career, deter effective enforcement?

What is the ability of communities to retain or acquire a professional sports franchise? Have the sports owner-promoters operated in a responsible manner which entitles them to continued antitrust exemptions? Should the broadcasting exemption be unchanged, repealed or conditioned on certain changes in policies and practices?

A comprehensive study of professionals sports should be undertaken not simply because of a baseball or football strike or because a football team has moved its franchise. It is needed because the existing monopoly powers of the sports league are so substantial that private litigation and collective bargaining cannot be relied upon to eliminate anticompetitive practices. The sports team owners can and do pool their reserves. They easily can drain a union of its financial capacity to conduct litigation or negotiations. Just consider the disparity in wealth between the NFLPA and twenty-eight NFL owners or between the Major League Baseball Players and twenty-six baseball owners.

We pledge to work with the Committee and staff to formulate effective and workable legislation.

I will try to answer any questions that you may have.

Thank you.

The following information was subsequently received for the record:

QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS THERETO

Question 1. If Congress does enact provisions to impede the relocation of franchises, unserved markets must be served by expansion of existing leagues, or they will not be served at all. Some suggest that repeal of the antitrust exemption for the AFL-NFL merger would ultimately cure the artificial scarcity of teams as the two leagues compete for viable markets (along with the USFL). What is your comment? However, if Congress is not ready or willing to take that step, what alternative proposals would you be willing to support to cure the artificial scarcity of teams? Do you agree that simply mandating expansion by a fixed number of teams would not provide an adequate solution?

Answer. Artificial scarcity imposed by the sports cartels is clearly a major factor causing team transfers. Because the leagues artificially restrict the number of sports teams, new markets with the financial ability and community resources compete with existing markets to capture a professional sports team. This intercity rivalry involves substantial financial concessions to team owners, the construction of new stadia, reduced rentals and other financial incentives. Customarily the sports leagues have looked the other way and allowed their team owners to promote this competition among cities, and to make the "best deal". The only real winners are the team owners.

In the past, NFL expansion only occurred in response to some legislative favor (i.e., antitrust exemption or other special treatment). Pete Rozelle persists today in dangling "possible expansion" in return for additional antitrust exemption. He alleges "chaos" will result in the wake of the Ninth Circuit opinion in the *Raiders* case. We disagree. We believe that the League possesses ample legal authority to regulate team transfers by adopting reasonable standards and reasonable voting procedures.

As Senator Lautenberg has said, the real focus of Congress ought to be on the issue of expansion rather than on team transfers. Expansion deals with the heart of the problem rather than its symptoms. The Major League Baseball Players Association has suggested breaking up the NFL into two competitive leagues and placing Baseball under the antitrust laws. Certainly both actions would introduce marketplace competition to professional sports. The existence of the USFL offers the promise of interleague competition in professional football. The players believe such interleague competition is healthy for the sport and for the cities. Placing Baseball under antitrust has long been supported by the NFLPA.

As for immediate relief, Congress should consider legislation to bar leagues from requiring extraordinary majorities when league expansion is considered. Such extraordinary majority vote requirements appear unreasonable on their face. Ratification of collective bargaining agreements, moreover, has been subject to such a requirement and explains why the players confront such obstacles in concluding fair agreements. Appropriate Committees of Congress also should direct the leagues to submit written guidelines under which they will consider future expansion applications. Congressional oversight of the process could go a long way to promote sports team expansion and reduce, if not eliminate, the spectacle of intercity competition for existing teams.

Question 2. Has your organization ever been privy to detailed financial information about the National Football League and its members that justify the antitrust protections that the league has enjoyed in the past or that it now seeks?

Answer. No. The National Football League Players Association has never had access to detailed financial information about the NFL or its member teams. For that matter, neither the Congress nor the courts have been furnished such data. To date, the NFL has not supplied such data in court proceedings when its restrictive practices were challenged as violative of the antitrust laws, nor has it responded to congressional requests for detailed financial data. The NFL only releases "average" revenues and "average" expenses. Whenever the NFLPA appears before the Congress, we urge the committees to seek detailed financial data from the NFL. We believe that such information is essential to assess how the Sports Broadcasting Act of 1961 and the 1966 merger exemption have operated. This year we urged both the Senate Committee on Commerce and the Senate Judiciary Committee to obtain such data before giving any consideration to the NFL's current plea for an across-the-board revenue sharing exemption. It is worth noting that the NFL's own "procedures," only adopted in December 1984 to govern future applications for team transfers, require the applicant NFL club to furnish-"*audited* financial statements for the

club for the fiscal years covering the preceding four seasons." (Emphasis supplied) Rozelle Memorandum to NFL Club Presidents, December 21, 1985, at 2.

Thus, the NFL itself recognizes the importance of hard data rather than the "average" team expenses and "average" revenues it periodically releases.

Question 3. While some suggest that revenue sharing has been essential to the success of the NFL, baseball has apparently thrived without it. Do you believe this reflects a basic difference between the two sports, or does it indicate that revenue sharing, at least to the extent utilized by the NFL, is not necessary to the financial success of the NFL?

Answer. We believe that revenue sharing is not essential to NFL success. Without revenue sharing, as authorized by the 1961 broadcasting exemption, the World Football League might well be alive today. Indeed, without that exemption the USFL might be in a better position to obtain access to network television.

We believe that the Congress should examine what the impact of revenue sharing has been on competition in the industry and what its impact has been on the consumer in terms of increased advertising costs as well as access to games.

Revenue sharing in terms of gate receipts appears to have brought greater stability to the League, but again we do not believe the matter has been studied and its full impact evaluated.

We oppose those forms of revenue sharing which are anticompetitive. Revenue sharing which eliminates competition among owners and removes the incentive to field the best team; revenue sharing which eliminates true salary competition; revenue sharing under which owners do not compete for players; revenue sharing that permits leagues to shift their games to pay-television; revenue sharing that deprives professsional athletes of a free market for their services; revenue sharing which permits sports leagues unilaterally to impose salary caps or ceilings; such revenue sharing should not be granted wholesale antitrust exemption.

Question 4. It is claimed that revenue sharing enables the NFL to maintain economic comparability of franchises, thereby ensuring the profitability of franchises in smaller markets. However, one might argue that revenue sharing reduces the economic incentives to place franchises in major markets, thereby disserving the multiple constituencies within a major market. Please comment.

Answer. Revenue sharing as practiced by the NFL has virtually eliminated competition among team owners for players. Since revenue levels are assured without winning, owners lack the incentives to bid or compete for players. Its effects on major markets need to be examined. Certainly, if there are no economic reasons for depriving major markets from hosting an additional baseball, football, basketball, or hockey team, marketplace forces, not the arbitrary actions of a cartel, should be permitted to operate. There should be additional teams in Los Angeles, Chicago, Philadelphia and New York. But revenue sharing has helped the NFL resist any further expansion.

There is a great danger to the public interest in providing to sports monopolists any further insulation from the reach of antitrust law. The sports cartels represent unregulated monopolies; their decisions are based on maximizing private profit and not providing the best product at the most reasonable cost. The exclusive territorial arrangements in organized sports would not be tolerated in other businesses and the full economic and social impact of the NFL's practice of sharing revenue needs to be carefully examined.

Question 5. In 1982, Commissioner Rozelle stated: "We feel that if we were to put specific guidelines in as to a transfer of a club—as an example, how they have done financially—that can be juggled. A team can arrange its figures in a way to show losses for several straight years." The bills before the Committee, however, include the financial situation of a team as a factor in considering relocation. How would you propose the Committee ensure that relocation decisions are made on the basis of true financial information, if the financial status of a team is to be a factor?

Answer. Rozelle's statement underscores the need for objective standards and third-party review of league decisions. How can the public be protected where the NFL Commissioner himself admits that owners will cheat? Without objective standards and reasonable procedures to guarantee that such standards are fully and fairly considered, the arbitrary NFL practices which were struck down in the *Raiders* case would simply be reactivated.

Although it is customary for litigants to modify their conduct to conform to the law after losing antitrust litigation, the NFL is different. It seeks to change the law not its conduct. It pleads for further exemption so that it can continue "business as usual".

We believe that documented financial justification—something like a failing business exception—is one type of a necessary element or standard to govern sports

team transfers. Several pending bills, such as S.172 and S.287, expressly exclude from the financial loss standard, personal debts of owners, excessive salaries to family members, and other personal expenses which may contribute to such losses. We also believe that each league needs to adopt uniform systems of account so that meaningful comparisons among teams can be made. Audited financial statements are essential. All such financial evidence, moreover, should be subject to rigorous challenge and review before a neutral third-party such as a federal court.

The professional sports team cartels have operated too long above the law and beyond public accountability. The time is long overdue to require teams' financial operations to be subject to public scrutiny. Disclosure is particularly appropriate in light of the immense commitments of finances and community resources sports leagues and their teams demand from municipal governments, and in view of the special exemptions from federal antitrust law already granted to professional sports.

Mr. BERTHELSEN. Thank you, Senators, for the opportunity to appear here this morning. I have been employed in the capacity of the lawyer for the players association since the early 1970's and as a result I have lived through a lot of the litigation that has pretty much formed the antitrust background of the National Football League and, to some degree, in other sports as well.

There is one big concern that I have as a lawyer when I see any new legislation which would purport to give the league any broader exemption than it already has from the antitrust laws. It is because I have seen in the past that the league on its own has tried to broaden those exemptions whenever it can.

For example, the Mackey case, which we filed against the NFL back in 1972, litigated in the mid-1970's. The NFL took the position that the exemption that Congress had given them when it exempted the TV and the pooling arrangements and the merger with the old AFL was broad enough to say that the restrictions on player movement within the league was also exempt from the antitrust laws.

We, of course, prevailed in that lawsuit and as a result of all of this we have a body of law that governs professional sports in the antitrust area. We are prepared to live by that law. We think that the law is sufficient and clear and we think, as Gene said, that the ninth circuit has taken into account many of the factors that have been under discussion here and does provide a sufficient guideline for the league.

We are opposed to any system in which the league itself in effect is a substitute for a court. As I read the Eagleton bill, the NFL in effect on some of these franchise moves would be placed in the same position the district court would in a Federal case, and the review of the NFL's decision would be tantamount to that of a circuit court. That is, is there sufficient evidence in the record to support the conclusions that are made?

I feel the courts have treated this issue in the past and that they should continue to do so, and they are sufficiently clear in those decisions.

We as a union are prepared to live by them, and we trust that the NFL and the other sports leagues should as well. It is somewhat ironic, in my view as a lawyer, that Congress has not seen fit to do anything about the sport of major league baseball. The courts have spoken in that area and said that we are not going to act. Well, the courts have spoken in other sports—football as well—and we think that that body of law does provide sufficient guidelines for the future of the sport.

The CHAIRMAN. Without getting into a legal discussion, let me ask you this. Let us suppose that the legal ability of sports leagues to restrain the movement of teams is now very much in doubt and, given the *Al Davis* case, leagues are reluctant to act. They are concerned that if they try to prevent the movement of a team they will be socked with a $50 million lawsuit.

Nobody wants to be hit with a $50 million lawsuit. Nobody wants to do anything that would expose them to that kind of liability. So let us suppose now that there is a great hesitation on the part of the leagues to do anything and that the result is in fact one of chaos, that any team owner can just move.

Is that a bad thing for football?

Mr. UPSHAW. Well, the problem was actually caused by them. I mean, the owners caused the problems. The ninth circuit decision was caused by them.

The CHAIRMAN. But regardless of who causes it, is it bad if an owner can just, without consulting anybody, just pull up stakes and move the team?

Mr. ALLEN. Stability is something the players in every sports league want to see. I mean, as Gene made reference to, after football careers they depend on being located in a city for a length of time. The families are there. They are people with families just like everyone else. The fans want to see the team stay in place, and so do the players, but I do not necessarily think that the players believe that giving an antitrust exemption to a league to make that decision guarantees very much.

I think that assumption is based on the fallacy that a collection of owners will act any differently than a single owner. They act in their own self interest. So if it has to be dealt with, perhaps legislation restricting movement of franchises makes some sense, as long as it is very narrowly drafted and does not grant any further antitrust exemption or any further exemption from judicial review to the league in question.

There certainly should be objective criteria, however it is dealt with. If it has to be dealt with legislatively——

The CHAIRMAN. Well, if there is any restriction, somebody has to be exercising the restraint. It is either going to be, I guess, some governmental agency, which will pass on moves, or it will be the league itself.

Mr. ALLEN. An objective review by an arbitration procedure may make some sense. Also, in the various pieces of legislation, we have not seen anyone suggest that the players' input should be included. If there is an arbitration procedure where the community the league and the team owner are involved, perhaps some level of government, there also ought to be some input from the players in that process. They have a lot at stake too.

The CHAIRMAN. It would seem to me that revenue sharing makes it possible for smaller communities to sustain teams, that a city like Green Bay, for example, would have a difficult time. I am not sure if Green Bay is a good example or not, but there are examples of communities that would have a very difficult time sustaining their teams without revenue sharing; is that right?

Mr. UPSHAW. Well, Green Bay is one of the most profitable teams in the NFL. The only thing we see that revenue sharing does is really cut down competition.

All other businesses operate with competition in this country, and that has been noted here today. Why should the NFL and other sports leagues be treated differently? Competition is the key and they should operate the same as any other business.

Mr. ALLEN. One of the things that protects the team in Green Bay is that it is operated differently from the other teams in the National Football League. I never hear Pete Rozelle say that when he testifies. It is not a for-profit entity. It is a not-for-profit organization. If I am not mistaken, it is publicly held and there are some restrictions that the community has put on it with respect to movement of the franchise.

Maybe the fact that Green Bay is doing well has more to do with that than it does to do with the revenue sharing for "little Green Bay," which is what you always hear. Revenue sharing may provide some stability, but it does some things that are bad for players. One, it cuts down on the competition for player salaries because there is no incentive for the owner to go out and pay more money for a star player if he is going to get the same return in revenue. And he will if it is shared by all owners in the league equally. And, two, it discourages expansion because if you are sharing TV revenues you do not want to let in new teams in the middle of a TV package because it is going to cut into the take of every existing owner. And that is why expansion does not often take place in the NFL, as witnessed by Seattle and Tampa Bay being the only true expansion teams in that whole period of time that Pete Rozelle was talking about.

The CHAIRMAN. Senator Lautenberg.

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

A point comes to mind after listening to my distinguished colleague, Senator Long, talk about how important that franchise is in the smaller community—and I respect that. I think one of you noted that if the league is given full power to make those decisions New Orleans one day could be looking at an empty stadium big enough to house a 14-story office building.

Maybe that is what you would have to put in there, an office building, or make it a shopping mall or something like that.

I would like a reaction from you, Mr. Upshaw. If there were a competing franchise to which a player could go if the franchise in the city where he was playing was moved, that would start to, I think, maybe assure the community that not only would they not lose their team but they would not lose their favorite players as well.

Stability is something I understand. I was a businessman. It is very tough to transfer people arbitrarily any more. They like being in the commur.ity. Do you think that expansion can begin to take care of the problems that you are concerned about?

Mr. UPSHAW. Well, it has been noted here today, and I think you noted it, that one of the problems now is the scarcity of franchises. There just are not enough franchises out there. So teams can hold cities hostage. Other cities, the have-nots, they are competing and they are doing it with public money.

We feel that expansion would address the problem. It would help solve the problem. Quite naturally, as one that is interested in jobs for players, I want to see as many teams as possible and as many as the market can bear. We feel that the opportunity is there. There are enough cities out there that want teams and they should have a chance to get them through expansion. That is one way to do it.

Senator LAUTENBERG. Mr. Allen, why was it necessary to create the new league?

Mr. ALLEN. I think it was necessary, it was possible, because there were cities like Jacksonville, Phoenix, Birmingham, and Memphis who were crying out for professional football, and had been denied professional football, for the reasons I stated earlier, by the National Football League, because it would have cut into their take per owner in that league.

But those cities have demonstrated time and time again their willingness to do almost whatever it takes to get a team in and this new league saw that as an opportunity, as a way to compete. But I must tell you—and that is what the USFL antitrust lawsuit against the NFL is based on—that this new league has had some real problems in breaking into the NFL monopoly, not the least of which is that the NFL has all three networks tied up with fall TV contracts.

Senator LAUTENBERG. So, if the franchises were available—I am not talking about willy-nilly, here is a franchise without any stringent requirements on facilities or community support—would it have not been necessary, then, to create the U.S. Football League?

Mr. ALLEN. I am not sure I understand your question.

Senator LAUTENBERG. If franchises were available and if there had been expansion to markets that can support them, would it then have avoided the requirement, let us say, for creating the new league?

Mr. ALLEN. I think it depends not so much on the cities. There are many cities beyond the list I just mentioned that could support professional football teams. I think it is more pertinent to look at what the TV package would have been like.

Senator LAUTENBERG. Well, of course the TV package is already there and if it was shared with more teams and more player opportunity would that not have kind of negated the interest?

Mr. ALLEN. I think you are probably right, which to me means that—well, the point I would like to make about that is that I think it is better to have competing leagues filling those open spaces than to have the NFL expand to 40 teams, because even if it expands to 50 teams it is still a monopoly with respect to the TV networks and the players and the fans.

I think it is much healthier for the sport, and the country as a whole in viewing the support of football, if there is competition between the two leagues.

Senator LAUTENBERG. Well, is there not competition between conferences that do that in some way?

Mr. ALLEN. There certainly is not for the players, because when the revenues are shared there is no incentive for the owners to compete for player salaries to get the best players they can, because they do not get a bottom line return by doing that.

Between leagues there certainly is that competition. In addition to supplying 900 new jobs for football players, the USFL has been good for player salaries in both leagues.

Senator LAUTENBERG. I would say we like it in New Jersey and we welcome Doug and all that. But I know some owners of teams in various leagues and various sports, one of whom proposed to me—he was very upset about, Mr. Chairman, our interference in the free market process—but he said what we ought to do, really, is to limit player salaries. He felt that that would be fair legislatively. And I said we had enough problems here without dealing with that.

But I think the point that we tried to make before someway or another escapes the owners. There needs to be opportunity for expansion. I was amused by the owners' definition of competition. It is all right as long as we set the rules for it.

Obviously you people and those that you represent would differ and I am inclined to agree that we ought to have open opportunity for everybody—for the owners and the players, and certainly the communities.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Long.

Senator LONG. Mr. Allen, maybe I have mentioned this subject to you and Mr. Upshaw on earlier occasions, but I have always felt it would be a good idea for people who are involved in something to own a piece of the action, so much so, I sponsored legislation to encourage employee stock ownership.

In just the brief discussion we had with Mr. Rozelle about what Mr. Mecom paid for that franchise compared to what he is asking for it now or even the price he is likely to get, it looks like it would have been a mighty good investment if you people had owned some of it on the starting date. In fact, I think all of this would have been a good investment.

Have you ever in negotiating for players ever suggested that it would be nice if the employees owned some stock in the operation?

Mr. ALLEN. Yes, in the USFL negotiations. It was not a suggestion met with much enthusiasm by the other side. What we are negotiating over in the USFL—and I think we will be able to reach some kind of agreement soon—is a percentage of gross revenues being allocated to the players and a portion of expansion fees being allocated for player benefits.

I think that involves a partnership. The NBA has a similar kind of arrangement. The Canadian Football League has a similar arrangement, and I am hopeful and encouraged that we will be able to do the same thing in the USFL. But it is my understanding that the league rules in both the USFL and the NFL would prohibit just that kind of employee ownership of the franchises that you suggest.

Senator LONG. You mean the league rules would prohibit fellows from owning some stock in the team for which he is playing?

Mr. ALLEN. That is correct.

Senator LONG. Well, I think we ought to take care of that matter, then. It seems to me that that is highly improper. Why did you not tell us about that before?

Mr. ALLEN. Well, I was not as ready for the question as I am this time.

Senator LONG. Well, do you know anything that would encourage a player to get out there and give his all for a team like the fact that he owns some of it?

Mr. ALLEN. I think that would be terrific, Senator.

Senator LAUTENBERG. How about cross-ownership in other teams?

Senator LONG. You can suggest that on your time. I know what I am concerned about.

I worked to put something in the law to say that the employer would get a tax credit of one-half of 1 percent against taxes. It would not cost him anything to have a plan where the workers would own some stock. That is the law, although it may be a fellow making $30,000 a year, it looks to me as though it would be still about, what, about $150 a year?

That might be enough to help to pay his dues in your association. It costs them nothing except just the legal fees, and I believe we provided that he can pay the legal fees out of the operations.

Have they explained to you what is wrong about that, about the employees owning something?

Mr. ALLEN. No, I would not say that our discussions have been broad and deep on the subject because the response from the other side has been so negative.

Senator LONG. Well, maybe I could help you.

Mr. ALLEN. We would welcome it, Senator.

Senator LONG. Do you have any pension plan to protect these fellows when they get older or when they are injured? Does the NFL, for example? Is there some kind of a pension plan available to players to protect them in retirement and to help them when they are injured and that type of thing?

Mr. UPSHAW. Yes; we have a pension plan to assist the player. We negotiate that in collective bargaining. For an injured player we do have such a plan.

Senator LONG. Well, is there a trust fund to back it up?

Mr. UPSHAW. Yes; we have a trust fund, the Bert Bell NFL Player Retirement Fund.

Senator LONG. Can you give me some indication how much money is involved in those funds?

Mr. UPSHAW Well, there is approximately $130 million in the fund today.

Senator LONG. Well, the thought occurs to me that those funds are supposed to be managed for the benefit of the players, right?

Mr. UPSHAW. Correct.

Senator LONG. That is the intended beneficiary. My thought is why wouldn't it be a good idea for the trustee of those funds to loan some of that money so that the employees could buy some stock in the teams for which they are playing.

Mr. BERTHELSEN. One of the problems, Senator, is that at least the ownership of the NFL clubs is very closely held. There is no stock to buy in NFL clubs. We, as you probably recall, proposed when we went to the bargaining table in 1982 that there be a system in which the players would be guaranteed a certain percentage of the gross revenues that were generated by the game.

This met with rather firm opposition by NFL management, with their saying no, we do not want the players to be partners in our

business. We do not want to bring them into the board rooms to make decisions with us. In short, in the NFL there is no stock to buy because nearly all of the teams are held by just one or two people each.

Senator LONG. Well, now, look, at this point I do not want to argue about the voting situation. I have debated that on the floor of the Senate. I know the two sides of it. There are arguments that can be made both ways. But, frankly, up till now I have been reluctant to push for voting rights on employee-held stock just for fear that that might keep the employers from setting up the plans.

I have no objection to the workers voting or the employees voting. Generally speaking, I think it is a good idea. But I have been reluctant to push that because I am afraid that that might keep the management from setting up the plans, the very thing you are talking about.

Don't you know? I know this, that it is possible to set plans up without getting involved in that. In other words, especially if it is a plan where you borrow the money and buy the stock, is that not correct, it can be set up in such a fashion that you could bypass the voting rights issue?

Mr. UPSHAW. Well, the NFL and most leagues have what they call a constitution and bylaws, and in testimony before committees you hear them refer to the constitution. If you are not listening to them you think they are talking about the U.S. Constitution. But they are not.

They have an internal document that they have adopted themselves and that contains the rules. The rules state what their rights are and what our rights are, and we have nothing to do with it, and there is nothing we can do about it. In every collective bargaining session we have tried to break into that, and we cannot.

So if you can do it, you will be the first.

Senator LONG. Well, I do not know of anything more pitiful than to see someone who has been very successful in athletics, who made a ton of money for somebody and does not have a nickel to show for it by the time he is through. In some cases, like in boxing, some poor fellow has had his brains battered until he jumps every time a bell rings, and other sports that might not be as bad, but even in the sports that you are in you fellows have all kinds of injuries that plague them all along life—knee injuries and things like that.

I just think that yours is a good example of where there ought to be more security, especially for the rank and file. Now my heart does not bleed too much for this fellow that just signed that contract to get how many million dollars. He was on television this morning—about $6 million.

Mr. UPSHAW. That is his league.

Senator LAUTENBERG. It is my State.

Mr. ALLEN. I do not begrudge Doug Flutie the $7 million, but for every Doug Flutie there are 700 players making $30,000, $35,000 a year in our league.

Senator LONG. And I am concerned about some of these fellows. Some of them go out and get hurt in the first year or two and suffer with the residual effect of those injuries for the rest of their

lives and have so little to show for it. It seems to me that you ought to be doing what you are doing, but I have been dismayed.

Let me say that as far as those who represent the workers are concerned, generally they have had tremendous opportunities if they would just take advantage of them, if they have stock in the company for their workers.

Mr. UPSHAW. One thing I want to respond to. You mentioned the pension plan we have in the National Football League. Well, it has taken us virtually since 1959. All the players that played before 1959 have no pension today. From 1959 on up to the present day, we have a pension, but it was a really reduced pension.

It used to be we could not even attend the meetings. Then we finally got a chance to attend the meetings and we could not vote. Then we finally got a chance to vote and it would end up a tie vote and we could not move it on to arbitration. So it has been a struggle for us just to get into the room to vote and to move things along.

Now the problem with all of this is that you say that the players do not achieve a lot, that we make a lot of money but we do not have anything to show. Well, the reason we do not is because we are flushed out of the system—25 percent turnover every year—4.5 years playing career—that is the average for every player. The group that we are here talking about—the team owners—are here trying to get more power to destroy us more, to give us less than we already have.

When we make a lot of money, Doug Flutie signs a contract for $7 million, we have automatically said give 50 percent to the Government. I mean, that is the way it is. We do not get the tax breaks. The owners get them. They depreciate my body every year and they are here saying look, we need more.

I am the one that has to represent those players. It is tough for us and Doug and the other unions in this country in sports to come before you and say do not forget us when you start taking care of those people.

Senator LONG. Well, let me ask you this. Did I not bring the subject up with you when you fellows were up here before?

Mr. UPSHAW. You sure did.

Senator LONG. All right. Well, now I am just telling you that you had an opportunity staring you right in the face and you had a guy willing to lead the charge for you at a time when you have got some leverage and you might be able to get something done.

Mr. UPSHAW. Don't give him any more power, and we might get there.

Senator LONG. Well, hold on just a minute. That is the time to get what you are looking for, is the time they are asking for something. So I would just like to see you and others—and I am not just here to find fault with any particular fellow, you included. I am just saying that I would like for all those who represent working people while they are negotiating just to put out there on the bargaining table, put on your shopping list, the fact that you would like for your fellows to own some stock.

They would like to have a piece of the action and negotiate for it. Even if it is the bottom thing you are asking for, you might be sur-

prised how often you will get something if you will ask for it. If you do not ask, you are not likely to get it.

Mr. UPSHAW. We will sure ask, but if you grant them the antitrust immunity that they want and we ask, what recourse do we have to achieve it? We do not have any except to strike.

Senator LONG. Well, if you do what is being suggested here, you fix it up so one team can just clobber all the rest of them because it has got the money to hog off the revenues and by doing so hire all the best players. There is not going to be near as many jobs available to play football as there is when you spread the revenues around and give all the teams a chance to compete on a somewhat even basis.

Mr. ALLEN. Senator, that is certainly a concern and no player wants to see a league dominated by one team where the players are well taken care of and they win all the games. But I would submit to you and I agree that it is only a new experiment, that that has not happened in the USFL.

Senator LONG. Well, how long has it been here? How long has the USFL been there?

Mr. ALLEN. The teams that have been spending the most money are doing well, but there are also other teams that have been spending, on all things including player salaries, far less money. And one of them last year, the Philadelphia Stars, won the league championship with a payroll that was in the bottom third of the league. So it is possible, I think, to achieve competitive balance with competition for players, if you have got some smart people picking the players for you.

Senator LONG. Well, I can recall a fellow who was a great ball player for Louisiana State University. He signed up with, I believe, the league to which Mr. Rozelle referred.

Mr. ALLEN. The All-America Conference?

Senator LONG. Yes; he had a good contract, but he wound up losing out. He should have gone with the other league because the league did not make it. It failed because of the problem that we are talking about. That one team was able to hire all the best players and so dominate the situation that the other teams were not competitive.

Mr. Rozelle just stated here that even that top team made out worse than it would have made out if the other teams had been more competitive. So in that situation, I think that if you are going to say do not share revenue it is not good for the game.

Mr. ALLEN. I do not think we have ever said that leagues should never share revenue under any circumstances. There is an exemption in place which deals with sponsored television and I do not think that there are many players that would argue that the practice of sharing gate receipts has not been a stabilizing one.

What we are concerned about in this present legislative effort is the attempt to expand that revenue-sharing to include pay TV and cable TV without really looking carefully at what the impact will be on the players and also on the fans, who will have to pay each time they watch one of those games on TV.

Senator LONG. Well, thank you very much for your testimony. I have enjoyed meeting with you here today.

The CHAIRMAN. Russell, I should have known that eventually the ESOP would follow me from the Finance Committee to the Commerce Committee, but I just never guessed it would happen in the first 3 hours I was in the chair.

Mr. ALLEN. We knew it.

Mr. UPSHAW. We knew it.

The CHAIRMAN. Thank you for warning me.

Senator Lautenberg.

Senator LAUTENBERG. With regard to the sharing of revenues, it of course would be unique in this business.

I do not know of any other place where employees get to share in the revenues before it is decided that there is anything left over after operating expenses. And so that is a prospect I think that would be very tough to get through this House.

I want to ask you something, Mr. Upshaw. I listened to your statistics that 4.5 years, I think you said, is the life of the average career. That is football, right?

Mr. UPSHAW. Correct.

Senator LAUTENBERG. Is there any value to the transfer of recognition gained on the playing field to careers beyond sports? This is usually a fairly good—and tell me if I am wrong—a fairly good ticket to other opportunities, is it not?

Mr. UPSHAW. Well, it varies from player to player, and that is why stability is so important to us. We have 4.5 years to get through the system, and within that 4.5 years we also have to decide what our next move is going to be. So we would like to know if we are going to be in a city and we would like to know how long we are going to be there.

We have roots that develop as an active player. When the Baltimore Colts sneaked out of town in the snowy night in March, Johnny Unitas and the players are still there and the fans are still there. That city has tremendous pride. Those players are part of that community, and they remember those fans that come into the airport and greet them, after a win or a loss, and we were fans first.

In 4.5 years it does not give you much time, but stability is important to players and want that stability and we want protections and third-party review with guidelines.

I do not know if I answered your question or not.

Senator LAUTENBERG. Mr. Allen.

Mr. ALLEN. I think that is a popular misconception that players can live off their notoriety after their career is over. Only about 3 percent of the players in the NFL make any kind of commercial endorsement, and far fewer than that 3 percent are able to continue that kind of commercial appeal after their playing career is over.

And only about 35 percent of the players in the NFL have their college degrees. It is even lower in the USFL because up until the end of this season players who are rookies must begin playing before their college years are over.

So we have a real problem with players who think coming out of college that a pro career is going to be something that will set them up for life. For most players, in football anyway, that is not the case. It is a good start, certainly. Nobody is saying that it is

punishment to play football and make the money, but very few players are able to make that a lifelong career.

Senator LAUTENBERG. In the USFL—well, it is still too early to tell. Mr. Upshaw, what is the average income for players?

Mr. UPSHAW. This last season the average income for an NFL player was $160,000, compared to baseball, at $315,000 to $350,000, basketball well over $260,000. So we are actually the lowest of all the major sports.

Senator LAUTENBERG. Does that include later on pension rights and things of that nature?

Mr. UPSHAW. Well, you do not get a pension until, you know, you get out at age 24 or 25, and you have to wait until 45, 55, or 62 to draw your pension.

Senator LAUTENBERG. But that is an annuity that is there.

Mr. UPSHAW. No; when you leave, that is all you get. It does not continue to grow.

Mr. ALLEN. It is a defined benefit plan.

Senator LAUTENBERG. But it is an annuity just like one buys an annuity from an insurance company.

Mr. ALLEN. To answer your question, about salaries for USFL players, the median salary in the USFL this year is about $50,000.

Senator LAUTENBERG. Mr. Chairman, I do not want to prolong the hearing. I would love to, but thank you very much.

The CHAIRMAN. Thank you very much for your testimony.

The next hearing on this subject will be on February 20, same room, same time.

[Whereupon, at 11:52 o'clock a.m., the committee adjourned, to reconvene upon the call of the Chair.]

PROFESSIONAL SPORTS COMMUNITY PROTECTION ACT OF 1975

WEDNESDAY, FEBRUARY 20, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m., in room SR-253, Russell Senate Office Building, Hon. John D. Danforth (chairman) presiding.

The CHAIRMAN. Senator Lautenberg, do you have a statement?

OPENING STATEMENT BY SENATOR LAUTENBERG

Senator LAUTENBERG. I do, if I may, Mr. Chairman, have the opportunity to read it fairly quickly.

Mr. Chairman, I am pleased to participate in this, our second hearing on the sports franchise legislation.

As many know, the Senate will soon make new committee assignments under the new arrangements. I, unfortunately, am supposed to leave the Commerce Committee to join the Committee on Appropriation. I guess you could say that I have been traded to another team, but like a rookie who broke into a club and then was traded to another, I will always have a soft spot in my heart for the Commerce team. I appreciate the courtesies extended to me by my colleagues on the committee, and I hope that I have been able to reciprocate.

That said, I would like to turn to the business at hand, the relocation of professional sports franchises. I have a short statement to read, and I am afraid then I am going to have to go to another hearing. I will try to get back before we conclude; if not, I will have questions for the record, if that is acceptable.

Mr. Chairman, as I have stated before, we must deal with two problems. Communities that have teams want to keep them, but cities that do not, want to get them. One might ask, need we address both problems now? As a matter of fairness, I think we must. As a political matter, I see no alternative.

I, for one, cannot stand by while legislation proceeds that satisfies the haves in baseball and not the have-nots. I would guess that the Senators who represent the long list of cities that are begging for franchises at the doorstep of baseball and football, and the other sports, will be there with me.

The question is, Mr. Chairman, how do we address both problems? How do we do it with the least involvement of government?

How do we do it while maintaining the quality of the sport? How do we do it while maintaining the competition in the marketplace?

First, I would observe that we don't have all the facts. Before the Congress are bills to shield business from the antitrust laws, legislation to grant to private firms the power to stop competition, and we lack the most basic financial information. What do the teams earn? What are their revenues? What are their expenses? How are they distributed? We do not know, and we should.

The burden should be on the leagues that seek these rights to make the case with facts, not conclusions. I would suggest that the committee delay action until the leagues do that. I would say this, the bills before the committee do too little to satisfy the baseball fans in my State, and I would say the baseball fans in other unserved markets.

What hope does New Jersey have for a baseball team under the chairman's bill? With all due respect, I am afraid, not very much, in fact less hope than it has now. New Jersey must hope that a team is driven into the ground, and then that no local buyer would be willing to pick it up at fair market value.

What is fair market value, if we have no real market? Indeed, the price is high because New Jersey and places like it have no teams. Demand of cities is met not by increased supply but rather by increased prices.

My good friend from Washington, Senator Gorton, should be commended for trying to address the needs of unserved places. He proposes expansion. How much expansion? Who should say? The bill would have Congress say, two teams, two for New Jersey, Miami, Tampa, Denver, Phoenix. It is hard to see how that might bear appropriate improvement.

Major league baseball says that it will expand, but rest assured that it won't expand enough to meet demand. Unmet demand keeps team prices high, and keeps cities and stadium owners on a short leash.

Mr. Chairman, the fans should have a say. The basketball, football, and hockey fans in New Jersey want to keep the teams they support, and the baseball fans in New Jersey, who want a team, who can support a team, ought to have one. The test of the legislation is whether the fans are served, not the leagues, not the owners, but the fans.

It is unlikely that I will be a member of this committee when it moves to markup, but I want to underscore my continued interest in this issue, and to express a desire to work with this committee and the sponsors, as the bills move through the process, to strike a fair deal for the fans.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. I am sorry, and I am sure the rest of the committee is, that you will be leaving the Commerce Committee. I view you as the Bruce Sutter of the Commerce Committee, and I am sorry to see you go.

Senator Eagleton.

STATEMENT BY HON. THOMAS F. EAGLETON, U.S. SENATOR FROM MISSOURI

Senator EAGLETON. Thank you, Mr. Chairman. It is nice to come back a second time.

I am here in a ceremonial role this morning, to introduce Mayor Richard Berkley of Kansas City who will be part of your first panel with mayors and other officials. Mayor Berkley has had a distinguished career in public service. He is serving in his second term as mayor of Kansas City, and he has been an outstanding occupant of that office.

I would also like to introduce into the record a statement from the mayor of St. Louis. It is six pages in length, and I think that you would prefer that it be placed in the record.

The CHAIRMAN. Without objection, it will be placed in the record.

Senator EAGLETON: Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Eagleton.

STATEMENT OF HON. RICHARD BERKLEY, MAYOR, CITY OF KANSAS CITY, MO

Mayor BERKLEY. Thank you, Senator Eagleton.

Mr. Chairman, my name is Richard Berkley, and I am the mayor of Kansas City, MO. It is a pleasure to appear before this body in support of legislation intended to protect the interests of fans and local communities in decisions affecting the relocation and stability of professional sports teams. I had the privilege of testifying before the Senator Judiciary Committee when similar legislation was being considered in 1982.

Being the mayor of a city is one of the most complex jobs in government. In addition to providing essential city services, I feel a mayor must work to develop a sense of community among a city's residents. For many reasons, some of which may be hard to explain, the presence of professional sports teams helps to provide community identity. Consequently, I, as well as other mayors, have a large stake in the outcome of this committee's deliberations on sports legislation.

During my tenure as mayor, I have also learned that the best way to keep businesses in a city is not to overregulate with them and try to mandate their actions. Instead, you must have reasonable and responsible regulations to try to find some common ground where business, Government, and local citizens can work together toward a common goal. This approach, I think, is very well reflected in the Danforth-Eagleton bill, S. 259. I am here today to express my support for that bill.

In particular, I congratulate its authors for not only tackling today's problem of relocation, but also getting at tomorrow's problem which is closely linked to team relocation, and that is league revenue sharing. The protection of league revenue-sharing rules is particularly important to midsized cities such as Kansas City. Without league revenue sharing, which is essential to team stability, the job of keeping professional sports teams in our cities would be a much more serious and a much more difficult task.

In my 1982 testimony, I detailed the close relationship between Kansas and its sports teams. I spoke of the unique role that we

have with our franchises such as the Kansas City Chiefs, Royals, Kings, and Comets, and the important place they occupy in our city.

I pointed out that professional sports leagues and their teams sell not only entertainment, they also sell civic identity, emotion, and commitment by the community involved. The civic identity and price that professional sports teams invoke in our citizens provide the incentive for local governments to make the public investment necessary to accommodate those sports teams.

It is both the emotional investment made by the local sports fans and the financial investment made with a sports fan's tax dollar that prompt me to appear before this body today. These investments need to be protected from unwarranted relocation by sports franchise owners who benefit from emotional and financial investments.

Congress first recognized this problem in 1982 when it sought to address the team relocation issue. Unfortunately, the legislation which I supported at that time, the DeConcini bill, was not enacted. Since that time, we have witnessed a significant number of moves by professional sports teams.

Last year, the Baltimore Colts left that city and moved to Indianapolis. The San Diego Clippers of the National Basketball Association moved to Los Angeles against the wishes of the NBA. The Philadelphia Eagles remained in that city only after last minute efforts by Mayor Wilson Goode. It is now common knowledge that football teams in St. Louis and New Orleans are considering moving to new locations. These activities have only created unnecessary anguish, ill will, and unstable relationships among sports fans, local government, and professional sports teams.

Our experience in Kansas City provides an example of the success that can be achieved when there is cooperation between a local community and its sports teams. We have had excellent long-term relationships with both Lamar Hunt, the owner of the Kansas City Chiefs football team, and Ewing Kauffman, owner of the Kansas City Royals baseball team. The Comets, our newest franchise, have generated a great amount of excitement and fan support for indoor soccer.

Although our stadium was neither new nor very large, the teams—the Royals and the Chiefs—worked very hard to sell tickets and encourage the fan interest without which no team can survive. Our citizens responded with tremendous support for the teams. In 1972, the twin-stadium Truman Sports Complex was opened through the cooperative financial efforts of the local government, the Chiefs, and the Royals.

Over the years, several cities have made overtures to the Chiefs, in particular, in an attempt to lure them away from Kansas City. However, Lamar Hunt, who lives in Dallas, the owner of the Chiefs, recognized that he has been successful precisely because of the enthusiastic support of Kansas City sports fans, and he resisted these overtures. The cooperative effort of the Chiefs and Kansas City citizens has created a very stable relationship that is both financially rewarding and tremendously loyal. The same holds absolutely true with the Kansas City Royals baseball team.

Unfortunately, other cities, such as Baltimore and San Diego, have not been as fortunate as we have in keeping these professional sports teams. However, we, too, have lost franchises in the past and now face the threat of the Kings moving to San Francisco. As teams have relocated in search of greener pastures, some cities have been left with publicly financed stadiums and arenas which provide no return on the substantial investments they represent. Consequently, the local governments, which often are already in dire financial straits, are forced to struggle further just to meet the financial obligations incurred as a result of the construction and maintenance of these playing facilities.

Much of this problem can be attributed to the move of the Oakland Raider to Los Angeles. The Federal courts in California decided that the National Football League's rules concerning team movement were an unreasonable restraint to trade in violation of the antitrust laws. This decision has had a chilling effect on the ability of professional sports leagues to enforce their rules on team relocation.

With all this legal uncertainty, a mayor might find it very difficult to recommend the substantial public commitment necessary to build a facility to establish or maintain a professional sports team. The risk could be too great.

It is anomalous that the antitrust laws, which were written by Congress to protect the public interest, can be used by individual teamowners as a means to circumvent their contractual obligations. Until Congress acts to solve this problem, we will probably see more unwarranted moves by sports teams while their fans and local governments are left to pay the bills and pick up the pieces.

Clearly, the recent movement of professional sports teams—actual, proposed, or otherwise—indicates that it is time for Congress to act, and we very, very much appreciate your serious consideration at this time.

Many Members of the House and Senate have recognized this need as Congress currently has at least eight bills pending before it that address this problem. Although all these bills have common goals, in my view, S. 259, whose cosponsors include Senators Danforth and Eagleton of Missouri, provides the best approach.

S. 259 represents the proper approach because it allows the sports league affected by the relocation to determine whether a proposed relocation is necessary and appropriate and gives that decision the presumption of validity it deserves.

However, when a league makes that determination, it must consider certain criteria that incorporate public interest factors. Quite a number are enumerated in the legislation. I would mention in particular that these public factors include, but are not limited to: First, the adequacy of a relocating team's current playing facility; second, the extent of fan support; third, the extent of public financial support received by the relocating team; fourth, the effect of the relocation on other professional and collegiate teams in the area and other appropriate factors; fifth, the responsibility of the owners for the situation in which relocation is being considered; sixth, any bona fide offer to purchase such member club at a fair market value if such offer includes continued location at such member club in the home territory; and other appropriate factors.

If a league is legally bound to adhere to this criteria when reviewing a team's proposed relocation, the public interest and investment will be protected.

S. Bill 259 also recognizes that a professional sports league is in the best position to determine whether the relocation of one of its teams is necessary and appropriate. Although the teams of a league compete on the field, the business decisions made by team owners require the cooperation of all league members.

Cooperation in certain areas is crucial if the league is to function in an orderly fashion and achieve long-term financial success. Thus, it is in a league's interest, as well as the public, to see that teams remain in locations which provide strong fan support.

In light of these circumstances, I believe it is especially important to clarify the status of professional sports leagues under our antitrust laws. Senate Bill 259 attempts to achieve this result by providing that certain league rules and agreements are strictly enforceable.

The bill would validate rules which: First, authorize a league to require a team to remain in its current home territory; second, divide league revenue to provide comparable opportunity among the member teams; and third, establish standards and procedures for the selection or termination of team ownership.

I feel these provisions dealing with antitrust concerns are absolutely necessary to enable a league to function with stability.

Ensuring the enforceability of certain league rules does not place professional sports leagues above the law. S. 259 is very narrow in scope. Only league rules which are necessary to protect the stability of the league and its relationship with local communities are subject to this statement.

Any legislation that attempts to deal with the problem of team relocation must also address the related issue of league revenue sharing. Imposing statutory controls on team movement without simultaneously addressing the issue of revenue sharing would be doing only half the job. S. 259 recognizes the interrelationship of these issues.

If mayors from other midsized cities, such as Atlanta or St. Louis, could be here today, I am sure they would agree that revenue sharing is an essential part of any legislation addressing the team relocation issue. Revenue sharing has been a primary factor in our success in keeping the Kansas City Chiefs in our city.

Under National Football League rules 97 percent of league revenues are shared among team members. Without revenue sharing you can be sure that the Chiefs and other teams in smaller communities would find it difficult to field competitive teams and remain financially strong. I believe this would result in the migration of many professsional sports franchises to the few large television markets. This would not be good for the future of Kansas City or the sports fans outside the major metropolitan areas.

In conclusion, S. 259 strikes the necessary balance between the interests of professional sports leagues, teams, local communities and fans. The investments made by the team owner, the fans, and local government are all fairly considered under the approach of S. 259. This bill will undoubtedly promote the stability necessary to protect sports fans and sports communities throughout the country.

Tangible benefits are also important to a pro sports city. About 2 years ago the Kansas City, MO, Convention and Visitors Bureau did a study to determine the economic importance of all four franchises on the Kansas City area. An economic impact, representing lodging and meals, was found to be almost $38 million. Food, beverages, and souvenirs sold at games exceeded $10 million. A payroll just for vendors was almost $1,400,000. Including the teams' payrolls, parking concessions, and ticket sales, the amount was close to $100.

Thank you very much, Mr. Chairman, for the opportunity to appear before you to express my views on this important legislation. At this point, I would be particularly pleased to answer any questions you may have.

The Chairman. Thank you, Mayor Berkley.

Senator Gorton.

Senator GORTON. Mayor Berkley, although you don't include statements to this respect in your formal written statement, I assume that you believe that the right to have a court review of these franchise shift decisions is an important part of the bill.

Mayor BERKLEY. Yes, very much. In fact, I think the entire list that Senators Danforth and Eagleton have enumerated in their legislation is a very good list, it is a very complete list, and I support all elements of it.

Senator GORTON. Why do you feel that the considerations for a removal of a team listed on page 6 of your testimony, the right to a court review and provisions related to revenue sharing, should apply to football, hockey, and basketball, and not to baseball?

Mayor BERKLEY. I think that they should apply to baseball. It is my understanding that baseball has been basically completely exempt from antitrust laws through previous legislation, and that is the reason that it is not referred to specifically here. Frankly, I would prefer that all sports franchises be treated equally and even-handedly.

Senator GORTON. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Long.

Senator LONG. I have no questions.

The CHAIRMAN. Mr. Mayor, some people would question why Congress is getting into this issue. They would say that we have so many problems facing the country now, what difference does it make where sports franchises are located? Professional sports are simply a matter of reading the sports pages, going to the games, and so on. It is not a significant issue given the sweep of issues that we face as a country.

How would you as the mayor of Kansas City respond to that kind of question. What are the interests of Kansas City in a sports franchise? To what degree does the community and the city itself have a stake, economic or otherwise, in the continued existence of a franchise? What happens to a city, or what could happen to a city if a major sports team were to leave?

Mayor BERKLEY. Several things. First of all, certainly the U.S. Senate and House of Representatives have other issues that are more important, there is no doubt about that. But, at the same time, sports activity in this country is a very important part of our national fabric in my estimation. It is part of what makes cities vi-

brant, and it is part of what brings people into the community. It is part of what really causes them to be exciting places to live and visit.

Sports in Kansas City are a very big factor. They are part of the enthusiasm and excitement that our city has. It is also important in the fact that we have a very large convention and visitors business. It is very significant because we draw from a very large region in the central part of the country, and as a result, sports, along with cultural activities and other amenities of the community, are an attraction to people coming in from perhaps a 500-mile radius to Kansas City. It totals tens of millions of dollars each year. I have the statistical information for that which I have indicated I will leave, but it is particularly important for a community such as ours.

The CHAIRMAN. Many jobs are at stake; is that correct?

Mayor BERKLEY. Many, many jobs are involved.

The CHAIRMAN. There would be no doubt that if, say, the Kings or the Chiefs were to leave Kansas City, the city would notice it, and notice it in a very tangible way.

Mayor BERKLEY. Very much so. As I said, our city, to be very candid, and I know we are all proud of our home community, but I think, as much as any city in the country, we are a sports oriented city that has been excited about its franchises and about special sports events that occur in our city as well.

The CHAIRMAN. Mayor, thank you very much for your testimony.

Mayor BERKLEY. Thank you for the opportunity.

Senator DeConcini will not be able to be with us this morning, so we will proceed to the next panel: Senator Mathias, Senator Sarbanes, Congresswoman Mikulski, Governor Hughes, and Mayor Schaefer.

Senator Sarbanes, would you like to proceed?

STATEMENT OF HON. PAUL S. SARBANES, U.S. SENATOR FROM MARYLAND

Senator SARBANES. Mr. Chairman, I appreciate this opportunity to appear before the committee, and I am very pleased to be here today with my colleague from Maryland, Congresswoman Mikulski, with Governor Hughes, and with Mayor Schaefer.

Both Governor Hughes and the mayor are very knowledgeable about the subject due to their extended and committed efforts to keep the Colts from leaving Baltimore. They have come here today to offer their perspective on the difficult problem of franchise relocation and the effect on communities that have dedicated an enormous amount of time, resources, dedication, and commitment to their professional sports teams. I am sure that the committee will find their testimony enlightening and persuasive.

I will be very brief, Mr. Chairman, because I do want to reserve maximum time for the Governor and the mayor.

I would be remiss if I didn't underscore our appreciation to you for acting so expeditiously to schedule these hearings. I know this reflects your understanding of the increasing seriousness of this problem. With each additional week, we learn of further owners

who are contemplating relocating their teams, leaving behind unhappy fans and empty stadiums.

In testimony before the committee during the last Congress, Pete Rozelle, the NFL Commissioner said, "Federal law as currently developed ignores fan, league and public interests that need protection." I have joined with Senator Gorton in sponsoring his bill, and our objectives in that legislation, which we believe strikes a reasonable balance among a number of legitimate and competing interest—Our objectives are: One, to promote franchise stability; two, protect the league system of professional sports; and three, alleviate the artificial scarcity of franchises.

The legislation gives the leagues the opportunity to regulate their own affairs while requiring that they utilize certain criteria in evaluating the need for proposed locations. These criteria are, I submit, reasonable and are ones that any prudent businessman would use in considering a decision to relocate a business.

Teams in legitimate need would have the opportunity to relocate, and the owner would be guaranteed fair value in any transfer of ownership. The local communities would also be guaranteed that their concerns would be heard and that they would have the opportunity to take action to ensure the continuance of a franchise in their location.

Perhaps the real cause of franchise instability is the artificial scarcity of teams, a consequence of nonexpansion of the leagues. The Gorton bill seeks to address that problem by, in effect, requiring a certain number of expansion clubs, and therefore takes this issue which has in a sense led to this bidding war, the existence of this artificial scarcity, it takes this issue head on.

We seek to provide a stable framework in which professional sports teams can participate in leagues with the unreserved support of the communities in which they play. In such a frame work, I believe professional sports can continue to play an important role in American life in a shared partnership with the community and the fans. I hope the Congress will be successful in carefully defining the frame work in which this would be possible.

[The statement follows:]

STATEMENT OF HON. PAUL S. SARBANES, U.S. SENATOR FROM MARYLAND

Mr. Chairman, I want to thank you for this opportunity to appear before the Committee in support of S. 287, the Professional Sports Team Community Protection Act, of which I am a sponsor. I am pleased to be here today with my colleague from Maryland, Senator Mathias, as well as Governor Harry Hughes of Maryland, and Mayor William Donald Schaefer of Baltimore. Mayor Schaefer is no stranger to this Committee having testified on similar legislation in the last Congress. Both Governor Hughes and the Mayor are very knowledgeable about this subject due to their strong efforts to keep the Colts from leaving Baltimore. They have come here today to offer their perspective on the difficult problem of franchise relocation, and the effects on communities which have dedicated an enormous amount of time and resources to their professional sports teams. I am sure you will find their testimony enlightening and persuasive.

I am pleased, Mr. Chairman, that you have acted so expeditiously in scheduling these hearings. I know that this reflects your appreciation of the increasing seriousness of the problem. With each passing week we learn of additional owners who are contemplating relocating their teams, leaving behind unhappy fans and empty stadiums. Four years ago, the Raiders set the trend by abandoning their loyal fans in Oakland. Baltimore's beloved Colts were spirited away under cover of darkness just a few years later. Last fall, the City of Philadelphia nearly lost the Eagles, until the

City came up with $30 million. Talk of prospective moves appear regularly in the headlines . . . the St. Louis Cardinals, the Pittsburgh Pirates, the Minnesota Twins, the list goes on and on. No one can say when this game of musical chairs will end. Our nation's cities will continue their efforts to lure professional sports team away from one another, squandering precious resources in the process.

In testimony before this Committee during the last Congress, National Football League Commissioner Pete Rozelle said "Federal law as currently developed ignores fan, league, and public interests that need protection." The Supreme Court's recent refusal to hear the appeal of the L.A. Raiders anti trust judgment against the NFL has resulted in placing the responsibility for action squarely upon the Congress. I believe that this legislation strikes a reasonable balance among legitimate, competing interests.

Our objectives are threefold. We wish to promote franchise stability, protect the league system of professional sports, and alleviate the artificial scarcity of franchises. This legislation gives the league the opportunity to regulate their own affairs while requiring that they utilize certain criteria in evaluating the need for a proposed relocation. These criteria are ones any businessman would consider in a decision to relocated a business and are very reasonable. Teams in legitimate need would have the chance to relocate, and the owner would be guaranteed fair value in any transfer of ownership. It provides local communities with guarantees that their concerns will be heard and gives them the right of first refusal.

Perhaps the real cause of franchise instability is the artificial scarcity of teams caused by the leagues' refusal to expand. This bill seeks to redress this problem by requiring that the NFL and Major League Baseball create expansion clubs to meet the obvious demand. It will also redress the loss to the people of Oakland and Baltimore of their NFL teams.

With this legislation we seek to provide a stable framework in which professional sports teams can participate in leagues with the unreserved support of the communities in which they play. Within such a framework professional sports can continue to fulfill their important role in American life. It is the responsibility of Congress to provide this carefully defined framework.

The CHAIRMAN. Senator, thank you very much.

Let me say this to all witnesses. Prepared statements will be automatically included in the record. There is no special need for you to read them, they will be in the record. We would appreciate it if you could summarize your comments, and hopefully keep them to the prescribed time.

Ms. Mikulski.

STATEMENT OF HON. BARBARA MIKULSKI, U.S. REPRESENTATIVE FROM MARYLAND

Ms. MIKULSKI. Thank you, Senator Danforth, and members of the committee.

I would like to thank you, Senator, for holding hearings on both the Danforth and Eagleton bill, and the Gorton bill of which I am the chief cosponsor in the House. Senator Sarbanes has outlined the provisions of the bill. The Gorton bill is identical to the Mikulski bill in the House.

I just want to make two points to the committee. First, your counterparts in the House are as equally serious about this legislation as you in the Senate. We intend, in the House Energy and Commerce Committee, to hold our hearings in mid-March so that we can proceed, hopefully, to a markup and debate on the bill. We hope to be able to be ready for spring training on this bill.

As we proceed in this legislation—I know that Mayor Schaefer and Governor Hughes will talk extensively about the economics of sports in a community. We have to, in Maryland, be as competitive to get a sports team as we are now to get shipyard contracts.

What we find, when we debate this legislation, I will just make this final point, is that very often when this legislation is discussed, we are told that the Government, particularly the U.S. Congress, has no role in the issue of sports teams.

I would respectfully disagree with that because we find that sports teams, No. 1, come to government, whether it is local or State, to ask for guaranteed, fancy, often lavish and luxurious, sports arenas. They want guaranteed tickets sales. They want State and local exemptions. In the case of Louisiana, they even wanted the state legislature to put up a substantial amount of money. Then they come to us wanting antitrust exemptions. They call that free enterprise. This Congressperson doesn't think that this is free enterprise. We think that this is looking for a free ride.

We think that if they want the role of government so extensively in their lives, the way we propose free enterprise is to provide the orderly frame work that the Gorton-Mikulski bill proposes, or the Danforth-Eagleton does, only we in the Gorton-Mikulski bill, proposed even one step further that the free enterprise should be based on competition, and that is why we want the NFL and baseball teams to expand their franchises.

We look forward to working with you cooperatively, and on a bipartisan basis. Thank you very much.

The CHAIRMAN. Thank you very much.

Governor Hughes.

STATEMENT OF HON. HARRY HUGHES, GOVERNOR, STATE OF MARYLAND

Governor HUGHES. Thank you, Mr. Chairman. I appreciate the opportunity to speak here on behalf of congressional action to solve what has become a very serious problem. I will apologize for reading my statement. It is brief, but it is so good that I think I have to read it.

A symbiotic relationship exists between a community and a sports franchise. There is a tight weave between the contribution of the community to the value of the franchise and what the franchise in turn gives back to the community in both economic and social benefits.

On the one hand, the importance of the community's contribution to the value of a sports franchise cannot be questioned. The community's interest creates the television market which is so critical to the financial success of any sports franchise. The community also creates the environment in which the team plays, providing public funds for stadiums, roads, and police and other services, all of which are essential to a franchise.

Finally, the community provides direct financial support through the purchase of tickets, concessions and other revenue generating items. Sports exists on a professional level in America only because of the exceptional support provided by the people of the communities in which they are played.

On the other hand, the special importance of a professional sports franchise to the community in which it is located is undisputed. As you, Mr. Chairman, noted at the outset of these hearings on February 4, the sports team is different from a normal business;

a sports team carries with it the support of the community, the identity of the community, the spirit of the community, and the pride of the community.

The collateral benefits, both economic and social, which a sports franchise provides by conferring "major league status" upon the community in which it plays often outweighs the substantial economic benefits directly associated with the location of the franchise.

While the loss of the Baltimore Colts holds a special meaning for Baltimore, the present legal structure and the resulting economic incentives to which the owners are subject, compel the conclusion that what is the past for Baltimore is the future for every American city which has or aspires to have a major league sports franchise. We see this prophecy coming true today in the case of St. Louis and New Orleans, and it foretells a bleak future not only for those cities that have teams, but also for those cities that want teams.

With respect to the former, the loss of the Colts will result in a direct economic loss to the State of Maryland of over $35 million per year. The city of Oakland and Alameda County are $30 million in debt as a result of the operations of the Oakland Alameda County Coliseum and will pay $1.5 million per year until the year 2004 to retire the construction bond obligation. Yet even economic losses of such substantial magnitude as these pale in comparison to the terrible harm suffered by these communities in terms of collateral benefits and civic pride. No community which presently has a major sports franchise is protected from a similar fate.

Nor is the future bright for those communities that want teams. The city of Indianapolis risked over $80 million by sinking that sum into the construction of the Hoosier Dome without a major tenant, then spent millions more to lure the Colts from Baltimore. By keeping the supply of teams unnaturally low, owners are able to force communities desirous of acquiring teams to bid up the price of obtaining them. The escalation of this bidding forces the eventual winner to pay over to the owner most if not all of the economic benefit attendant to acquiring the team.

We are thus facing a problem that is national in scope and of enormous economic magnitude.

The consumers of professional sports number in the hundreds of millions, and they spent billions upon billions of dollars each year. For example, the cost of 1 minute of commercial time during the most recent Super Bowl was $1 million, an all-time record for television advertising. The potential cost to taxpayers of the continued unrestrained ability of franchise owners to ransom communities may soar well into the financial stratosphere.

The problem we are experiencing today as a result of the movement of professional sports franchises, however, are only the symptoms of a much graver and far more serious malady that currently afflicts professional sports in this country. I am referring to the problem of scarcity.

Senator Gorton and Senator Lautenberg succinctly described the "root cause of the problem" the last time this committee considered the subject: an artificial scarcity of teams exists because of the

joint decisions of league members and their anticompetitive behavior.

This artificial shortage causes the much-publicized bidding wars because cities which have the size and the demand to support professional sports franchises have only one realistic avenue available by which to obtain them—the raiding of other cities.

It is incumbent upon this committee and the Congress not to adopt a "Band-Aid" approach to the problem of professional sports by addressing only the outward symptoms, franchise transfers. A cure for the underlying disease, the scarcity, must be found. The development of such a cure requires a comprehensive examination of the fundamental economic nature of professional sports in the United States, especially football. The unique nature of both the supply of and the demand for professional sports must be considered.

Focusing first on the supply aspects, as Mr. Justice Rehnquist noted in his dissent from the denial of certiorari in *National Football League* v. *North American Soccer League*, sports leagues are essentially joint ventures where no individual joint venture partner can produce the product alone. Since a high degree of cooperation is a necessary prerequisite to the creation of the product, professional sports are readily distinguishable from a typical joint production venture between, for example, automobile manufacturers.

An even, competitive balance among the franchises, however, is necessary to maintain maximum fan interest. The National Football League has used the now familiar term "parity" to describe this balance and has striven mightily to bring it about. The final result of significant competitive imbalance is clearly illustrated by the All-American Football Conference, a competitor of the NFL's in the 1940's, which ultimately failed because of the near total domination of the conference by the Cleveland Browns.

Thus the survival and success of professional sports depend upon the existence of strong incentives for the franchise owners to field winning teams and of league structures and regulations that give the franchises relatively equal opportunity in this regard.

Professional sports leagues, particularly the NFL, have recognized these facts and have instituted revenue-sharing procedures to prevent the larger cities, such as New York, Los Angeles and Chicago, from dominating the leagues. Without such revenue sharing, franchises made richer by being located in larger cities would outbid the others for quality players and, in the words of Senator Long, franchises located in smaller cities "would just get stomped from now till kingdom come."

One of the dangers inherent in the present situation is that the bidding between cities will escalate to such a degree that certain owners, guaranteed of sold-out stadiums by cities eager to acquire teams, will be deprived of the financial incentives necessary to provide winning teams and will not spend the financial resources needed to remain competitive. An undesirable imbalance in the quality of teams and a concomitant decline in fan interest would inevitably results. This process has already begun in the case of the Colts, where Mr. Irsay, having been guaranteed by the city of Indianapolis a packed Hoosier Dome regardless of the Colts performance, has refused to sign his top draft choice.

Turning now to the demand for professional sports, it too is unique. The fans, who are the consumers of professional sports, have exhibited a tremendous appetite to see one champion crowned in each professional sport. The desire to be "Number One" pervades all sports, both at the professional and collegiate level. This results in a structure in professional sports that will allow some mechanism to exist whereby it can be determined who is, in fact, the best.

Usually the ultimate result of this is the creation of one professional league for each sport. The mergers which created one professional football league in 1966, one professional basketball league in 1976 and one professional hockey league in 1979, and the tremendous resultant success of the championship contests of these leagues, particularly the Super Bowl, is evidence of this.

Congressional help is absolutely necessary in order to help solve the crisis which now faces American professional sports.

All aspects of the relationship between sports franchises and the communities in which they play that can be handled at the State or local level, such as the terms of stadium leases for example, which should be handled at that level. A complex Federal regulatory framework that governs the intricate details of the operation of professional sports leagues is neither needed nor desirable.

The problem of scarcity, however, is national in scope and had its genesis in Federal legislation and Federal court decisions. Thus only action by the Congress can resolve the crisis in which American professional sports now finds itself. Congress must do now what it has always intended to do—level the playing field so that communities and sports franchises are placed on equal footing and the symbiotic relationship that exists between them can flourish.

The NFL in particular has used the legislative process to foster the monopolistic environment with which we are faced today. In 1961, the NFL sought for and obtained legislation permitting the sharing of television revenues. In 1966, additional Federal legislation permitted the merger of the NFL and the AFL, and applied the 1961 antitrust exemption to the merged entity.

Viewed in the abstract, both of these pieces of legislation were positive. The 1961 legislation permitting revenue sharing was needed to provide a competitive balance among teams. The 1966 legislation, allowing the merger, gave the fans what they wanted—a chance to see one champion crowned.

The CHAIRMAN. Governor, I don't want to hurry you, but could you summarize your remaining points.

Governor HUGHES. Let me just sum up, Mr. Chairman.

Their combined effect, however, was to create a legislatively protected monopoly that dominates the market and hoards the supply of teams to the detriment of both fans and communities.

This monopoly has a peculiar ability to maintain itself because of the significant role and the special importance of television to professional football. Over 60 percent of NFL revenues come from its television contract with the major networks. The importance of television to the NFL is clearly illustrated by the marked difference in the NFL's response to the proposed move of the Philadelphia Eagles and the move of the Baltimore Colts. The NFL sat idly by and did nothing when the Colts, one of the glory franchises of the

League, were pulled out of Baltimore in the dead of the night. It claimed that any action might subject it to antitrust liability similar to the $50 million judgment rendered against it in the Oakland Raiders case, Los Angeles Memorial Coliseum Comn. v. NFL, 726 F.2d, 1381 (9th Cir. 1984), *cert. denied*, -- U.S. — (November 5, 1984). On the other hand, when Mr. Tose proposed to move the Eagles from the fourth largest television market in the country, the NFL set aside its fears of futher antitrust liability and filed suit to legally block the proposed transfer.

The critical importance of television to the NFL and the NFL's antitrust exemption which permits the pooling of revenues combine to remove almost all economic incentive which the NFL might have to expand. Once teams are placed in the major television markets, as they presently are, the incentive for expansion disappears. If 28 people are dividing a pie, why cut it 30 ways unless the addition of the extra two people sufficiently increases the size of the pie? Mr. Rozelle admitted before this committee that the importance of television to the NFL and the division of television revenues destroys all economic incentive for the NFL to expand, stating:

> We do make money on expansion, as some other sports do, because we share television equally, and in a very short time, if not the first two or three years, the sharing of television negates what we get for the franchise.

Furthermore, in response to Chairman Danforth's articulation of Senator Lautenbertg's concern that the real problem is scarcity and the NFL has no incentive to expand, Mr. Rozelle replied that this was not a problem "because of the past," and went on to describe the history of the NFL's expansion, concluding with the bald assertion that the NFL will expand "because we have done it in the past." The simple fact is, the NFL has added only two teams since its expansion decisions 20 years ago in 1965.

More importantly, in describing the NFL's expansion, Mr. Rozelle claimed that it took place "without dictate or pressure from Congress." An examination of the record, however, shows that every NFL expansion since 1960 coincided precisely with the passage of Federal legislation that was advantageous to the NFL. A review of the NFL's total expansion history over the last 25 years reveals the following:

One, the NFL had 12 teams in 1959. The addition of Dallas in 1960 and Minnesota in 1961 coincided with the passage of the previously described legislation overruling *United States* v. *National Football League*, 116 F. Supp. 319 (E.D. Pa. 1953), which had prohibited certain television revenue sharing paratices, and granting the NFL an antitrust exemption permitting it to pool its television revenues.

Two, the addition in 1965 of Atlanta and New Orleans came at a time when the NFL was before Congress seeking an additional antitrust exemption, which was ultimately granted, that would permit it to merge with the AFL.

Three, after the 1966 merger, the addition of Seattle and Tampa Bay in 1974 coincided with the NFL's successful attempt to persuade Congress to limit the term of proposed legislation prohibiting home teams from blacking-out televised games when they were

playing. See Pub. L. 93-107, §1, 87 State. 350, repealed by Pub. L. 93-107 §2, 87 Stat. 351 (1973).

These "coincidences" strongly support the conclusion that, left to its own devices, the NFL expands when it wants something from the Congress.

Since sports leagues will rectify the situation without congressional involvement, Federal legislation which deals with both franchise mobility and expansion is essetial. It is critical that this committee and the Congress act not to finish the job that was begun in 1961 and to fulfill what Congress set in motion when it first addressed the problems of professional sports in the United States. Since sports leagues are unique businesses, unlike automobile factories or electrical appliance plants, the antitrust laws should not be applied to them the same manner as they are applied to other industries. Legislation permitting the restriction of franchise moverment is therefore necessary and appropriate.

But to adopt a "band-aid" approach by addressing only the superficial problem of franchise mobility while permitting the fundamental problem of franchise scarcity to go untreated would be tragic. The rulers of professional sports must be prohibited from taking unfair advanteage of the special status afforded them under the antitrust laws. They cannot be permitted to "have their cake and eat it," complaining that they are unique and thus deserving of antitrust exemptions, while simultaneously claiming that they are just like any other business and, consistent with the free enterprise system, should not have to countenance Federal intrustion.

Oppressive regulation is not the answer. Congress must mandate, however, that reasonable expansion take place. Congress must impose upon the czars of professional sports the obligation to supply all areas where demand is sufficient to justify the cost of supply. Otherwise acting like the monopolists that they are, they will continue to restict the supply at the expense of communities and fans alike.

Baltimore and the surrounding area is one of the greatest sports communites in the entire nation. The support that its fans have given to their teams made the Baltimore Colts one of the bedrocks upon which the National Football League was built, and the Baltimore Orioles a standard which other baseball franchises would strive to attain. But the promise of the future far outshines even the glories of the past. If the Congress adequately addresses the foundational issue of franchise scarcity by requiring reasonable expansion, I have no doubt that the citizens of the city of Baltimore and the State of Maryland will receive their fair due.

Thank you very much.

The CHAIRMAN. Governor, thank you very much.

Mayor Schaefer.

STATEMENT OF HON. WILLIAM DONALD SCHAEFER, MAYOR, CITY OF BALTIMORE, MD

Mayor SCHAEFER. Thank you very much, Senator, for allowing me to appear over here. Those lights make me nervous, and as the caution light goes on, I will try to stop.

First of all, I don't have any real prepared statement because it most likely wouldn't be any good. I want to give to you three or four questions as a mayor whose team has been removed by Turn-Off Irsay in the middle of night. Like the Mayflower, they floated in and they floated out, and they took the team away.

What did that mean as far as we were concerned? I thought, how do I get over to Congress, how do I get over to Harry Hughes, how do I get over to everyone the importance of a franchise to the city of Baltimore and its impact on the State. First of all, the State never recognizes the importance of a franchise in a city until it leaves. Then all of a sudden they say, "There is $35 million loss."

I went down to the State legislature for years on my knees and begged for authorization for improvements to a stadium, and we got it with the assurance that the city would pay for it.

I said, when I was down there, if we lose the team, we are going to lose a major industry. A sports team is not a major industry, that is just a sports team. Then we looked into a whole big report and we found out that this industry was worth $35 million to the city of Baltimore and to the State of Maryland. It meant jobs. It meant tax base. It meant all the things that were necessary to keep an industry there.

Then all of a sudden we get all excited and say: What has happened? Why is this an important issue for you, you have so many things to worry about and so do I. I am still worried that you are going to take away revenue sharing, in fact, I am petrified, so this is a way to lobby for it. That is number one.

I will tell you why it is important because every time you take something away from a city that is struggling like ours, we lose. We lose. The city loses jobs, assessment base, taxes, entertainment, all the things that keep a city alive, and that is the important thing.

Second, is there a need for legislation? Why should Congress be interested in this? Why should you intervene, or should you intervene? My answer to that is yes.

You know, no one really worried about it when Oakland lost their team, it just went away. Then all of a sudden Irsay floats in and our team goes away, and no one is really too concerned because it was only two cities. Then all of a sudden, a city down in Louisiana may lose its team, and the city of St. Louis may lose its team, and somebody else may lose their team. You begin to figure that this could happen to any city in the United States no matter how much the team was supported.

Let me tell you about the Colts. In the city of Baltimore for 30 years, they were the ones in many respects that helped the NFL become the strong franchise that it is today, the days of Unitas, Pellington, Ameche, and all the rest of them. That famous game that they played in New York, that is what made this a great sport.

The fans have supported the team. They have done everything they could. They had an owner who came in, he didn't pay any salaries, low salaries, the lowest in the league. He would not sign a lease with us. We had improvements to be made to the stadium, he wouldn't agree. He shopped the team all over the country.

We tried to do everything we could to keep the team there. He had more football players coming in and out, he didn't know the names of them. They were in and out so fast, you couldn't even identify the team. Yet the city of Baltimore averaged over 41,000 people during the entire season that the team was there.

Then he takes it way. Just like that, he moves it out, without agreeing with us because we matched Indianapolis dollar for dollar. We didn't match them with a sky-box that had a private toilet. I couldn't do that, you had to use the public lavatories in the city of Baltimore. We tried and we matched everything that they did, but it didn't make any difference, they went.

Let me, and then I will stop because I see the lights are on, but I just want to show you.

I came over here last year and I went through a whole series of charts. I said to you: This is what has happened to the city of Baltimore. I showed you the impact. I showed you the loss of revenue. I showed you the loss of jobs. I showed you young people who didn't have jobs. I showed you people on Social Security who didn't have jobs. I showed you all of the impact.

Senator, you did a great job. You put the bill in, and it got through the committee, but it was lost. I will tell you right now, I want to bring this to your attention, spare other communities from what we have suffered. Spare other communities.

I had a chance to buy the New Orleans Saints, and we had good people who were going to buy the team or try to negotiate for the team. I said, did you go to the mayor and ask him. The answer was no. I said, no, don't even want to be part of it.

When the Stars came down to the city of Baltimore, the first thing I asked, "Did you go to see Mayor Goode and ask him whether he could keep the Stars along with the Eagles?" They said: "Yes, we have gone to the mayor, and the mayor said, you are right, we can't keep both of them here. Every mayor will be up against the same thing, being shopped by various owners unless something is done."

The Gorton bill, I think, is the proper bill, and all the legislative bills, although I have not read all of them. Something must be done. A community which supports a team. A community that will put up their money. A community that will provide an adequate stadium, they don't have to have a dome in every stadium. They don't have to have plastic seats in every stadium.

To prove that Baltimore was a good community, to prove that we could support a team, the University of Maryland came to play Clemson, and we had 61,000 fans in the stadium that day.

Let me summarize: First, it is time for the legislation; it is necessary; it is needed for every one of you to have a team and not be subjected to the same thing that we suffered. A man who cares less for the community. He just walks in with his lawyer and takes it out.

Now is the time. All the things that the Senator said, everything that the Congresslady said, everything that Senator Mathias is going to say and Governor Hughes has said is absolutely true.

The mayor of Kansas City, he still has his team. He is here because he is petrified. But he has a good owner. He has Lamar Hunt, and Lamar Hunt will stay in.

E. Bennett Williams told me: I will keep the Orioles in the city of Baltimore so long as the fans support the team. That is all I am asking him to do. We bring the fans out, you put the team on the field. We work together. That is what happened.

It is time for the legislation. Spare us, and now is the time. Thank you.

The CHAIRMAN. Mr. Mayor, thank you. I think you are for the bill.

Senator Mathias.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., U.S. SENATOR FROM MARYLAND

Senator MATHIAS. Mr. Chairman, I am going to be very brief. What is apparent here is that there is a total unity among Marylanders on this issue. We speak with one voice, with one object, with one goal, and I hope with total success.

We have learned through very bitter experience what other communities, as the mayor has said, are about to learn. This is not a unique situation. What happened in Maryland has happened in other places, and will happen again.

Members of the Senate who sit back and think that they are immune from this problem had better learn by our experience. This is a contagious disease, and it is spreading.

The root cause here, which is really what we have to get at, is that there aren't enough teams. The reason that there aren't enough teams is because of the action of the Congress, and the courts. The Supreme Court, in the case of baseball, and the Congress, in the case of football, have removed some of the incentives that encourage competition by granting certain antitrust exemptions, and that is clearly where we start. The exemptions were sought on the justification that it would keep the teams in playing parity on the sports field.

S. 287, the Gorton bill, which we support, corrects the adverse effects of the antitrust exemptions by requiring that proposed relocations be evaluated against a set of reasonable standards. The standards are fair to the community, fair to the owner, and fair to the league. The bill contains conditions that meet the antitrust standards that the courts have already approved.

We have all reviewed the decision of the Ninth Circuit in which the court indicated that any relocation rule has to be reasonable. The NFL and the owners have said that they can't write any reasonable standards on their own, so I think that it follows that Congress has to write the standard and that is what this bill does.

There are several legislative proposals that suggest relocation standards, but what distinguishes this bill from the others is the procedure used to evaluate a proposed move. It protects the community interests by adding two key elements: a reasonable standard to evaluate a move, and a review process that includes the leagues and an independent review by a neutral party.

I think that it is unreasonable to expect the owners to forego any consideration of private gain even for the sake of public benefit. We have to recognize that the interests of the community, leagues and owners will not always coincide, much as the mayor would like

to make it so. There are some situations in which the gain will be viewed from different angles.

So we have to ask the owners and the leagues to share the relocation decisions with the community using standards that embody sound business judgment and the public interest. I think this will promote stability between the team and the community.

It will not ease the bidding war caused by the scarcity of teams. So this bill requires a modest expansion. I think that is a reasonable request on the part of the Congress, to provide relief for emerging markets and in cities that have recently suffered because of a team relocation. That is reasonable by the very definition of the term reasonable, and I hope that this committee will very promptly report it favorably to the Senate so that we could get action where action is so badly needed and so long overdue.

Thank you.

[The statement follows:]

STATEMENT OF HON. CHARLES MCC. MATHIAS, JR., U.S. SENATOR FROM MARYLAND

Mr. Chairman, members of the committee, I would like to thank you for the opportunity to testify today in favor of Senate Bill 287. I'm delighted to say that all of us from Maryland support this legislative effort. This is one strong, united Maryland team that won't cave in when the going gets tough.

By now, we are all aware of the tragic lessons many communities have learned through bitter experience. We now know that civic pride, fan loyalty and even large public subsidies play second fiddle to the profit motive of some team owners. Our cities are caught in this game of musical chairs, and I'm here today to say let's stop this music and end this game.

Less than a year ago, Baltimore was the victim of such abuse. With more than 30 years of football history, Baltimore lost the Colts. That is the worst case. But just the threat of a relocation can cost communities a bundle. Buffalo, Minneapolis, Philadelphia, and New Orleans have all faced a polite form of extortion—either make enormous concessions at public expense to keep team owners happy, or watch their teams roll away in moving vans. Only the owners can win these bidding wars.

For an owner, moving a franchise is no big deal. He can pack the team's value—league membership, TV revenue-sharing, and player contracts—in a briefcase. It took Bob Irsay all of one hour to pack up the Colts. He packed up at three in the morning to beat Baltimore's rush hour traffic.

But communities can't move, and the highways, parking lots, stadiums, and sports complexes they build to serve their teams can't be sold, packed up, and shipped to a new city. The cold winter winds whistle through the empty stadiums while the hapless taxpayers just keep paying through the nose to retire the construction bonds.

The root cause of the problem is a scarcity of teams due to the intervention of both the court and Congress. The Supreme Court, in the case of baseball, and Congress, in the case of the NFL, have removed some of the incentives that encourage competition by granting the leagues certain antitrust exemptions. The leagues have sought these exemptions to help them keep playing parity on the sports field.

S. 287 corrects the adverse effects of these antitrust exemptions. The bill requires that a proposed relocation be evaluated against a set of reasonable standards: stadium adequacy, financial hardship, fan support, and the extent to which the team has received public subsidies. These standards are fair to the community, fair to the owner, and fair to the league. They contain conditions that would meet the antitrust standard set by the court. In the Ninth Circuit decision, the court indicated that any relocation rule must be reasonable. The NFL has said it cannot fashion such a rule, so Congress must; and this bill does.

Several bills would set relocation standards. What distinguishes S. 287 is the procedure used to evaluate a proposed move. Using the guidelines, the leagues first examine relocation. If the league approves the move, then a three member arbitration board gives the move an independent review. If the arbitrators agree with the league, the move goes through. Unlike litigation in this area, the decision process takes only 3 months.

This process protects the community interest. It embodies two key elements: reasonable standards to evaluate a move and a review process that includes the leagues

and an independent party. We cannot expect the owners to forego consideration of private gain for the sake of public benefit, and we must recognize that the interests of the community, leagues, and owners do not always coincide. So we ask both the owners and the leagues to share relocation decisions with the communities, using standards that embody sound business judgment and the public interest.

The final major feature of this bill is the required expansion in some of the established leagues. Normally, our system relies on competition to protect economic freedom and promote efficient markets. With the antitrust laws, the government safeguards the public interest by encouraging competition. But, as I have already said, both Congress and the Supreme Court have had a hand granting certain exemptions at the request of the leagues.

Unfortunately, this limited antitrust immunity insulates the leagues from competition, causing the scarcity in the number of teams.

The NFL/AFL league merger ended competition for choice location sites, because increasing the supply of teams makes each team worth a little less. Revenue sharing inhibits expansion, because adding on additional teams means a smaller slice of TV money for each owner in the general revenue sharing package.

While establishing relocation conditions promotes stability between the team and the community, it does not ease the bidding war caused by the scarcity of teams. This bill requires a modest amount of expansion in the most established leagues to ease the pressure for teams and provide relief for emerging markets and cities which have recently suffered because of a relocation.

This bill approximates the free market outcome for team owners and the leagues absent the antitrust exemptions. For without the antitrust exemptions individual teams could not and would not ignore the fan support, stadium adequacy and gate receipts and the other factors so important if teams relied only on their local markets. And without their preferred antitrust status, leagues would actively compete to keep cities and expand to new markets in order to increase their revenues.

What we are doing in the public interest is imposing a little restraint on owner whim and making the leagues a little more responsive to market pressure, in exchange for their preferred status under the antitrust laws. In the context of remedying the community concerns, I am always ready to listen to proposals for improving the bill. However, we cannot give the leagues unbridled power, because they are supposed to play football, or baseball, or hockey—not monopoly. S. 287 will promote sports franchise stability by providing a comprehensive solution addressing the competing interests of the owners, the leagues, and the public.

The CHAIRMAN. Thank you, Senator Mathias.

Senator Gorton.

Senator GORTON. Mr. Chairman, I have no questions. Obviously, I welcome my colleagues from Maryland, the distinguished Congresswoman, the Governor, and the mayor. I thank them for the support of our bill, and state that Baltimore is the most dramatic and the most recent example of a totally unwarranted move on its franchise.

Senator MATHIAS. But it will only be the first in a long line of mourners.

Senator GORTON. That is correct. The Senator is absolutely correct. It is to correct that situation that all of these bills have been drafted and written, and we appreciate your support.

Senator LONG. I think you gave a fine statement. I agree with most of what you had to say. I have agreed with Mayor Schaefer on other occasions, and I voted your position.

I have read all of your statement, and I don't think there is any doubt that if someone had the foresight to anticipate the problems that you are highlighting here, we could have taken care of that at the time we passed the bill to merge the two football leagues. I recall that very well because I was the manager of the bill to which the amendment was attached.

It was a floor amendment to a finance committee bill. I can't recall what the revenue bill was that we amended, but I do recall

the amendment very well. I don't think that anybody in the league would have seriously objected to the type of thing that you are asking for, that you have assurance that the team will not be moved away unless there is some justifiable basis for it under a reasonable standard.

I am a cosponsor of one of the bills. I will do everything that must be done to help pass legislation along this line. I feel confident that it will have the support of the two Maryland Senators who will be very staunch and sturdy allies in taking care of this matter.

Count me in, I will do what I can to help. As Bob Kerr once said, when he served on the finance committee, that it is easier to get on a combine he wasn't in on, and I feel the same way about this measure.

We have a football team in New Orleans and I hope that we will continue to have one, and we hope to see you have a good football team playing in Baltimore again. Everything the mayor said about what Baltimore has done for the league, I think is entirely correct. I will be glad to work with you to try to bring it back.

The CHAIRMAN. Let me thank you all and assure you that we are all in on the same combine. There are a number of different bills that have been introduced, but I think that the interesting thing about them is the common features in them. I think that there is basis on this committee to work toward a consensus position.

There may be some differences between the various bills, but in my view those differences do not in any way limit the fact that there is a very strong consensus and a desire to do something about what is now a totally uncontrollable situation.

We may disagree on matters such as mandating the increase in leagues, where teams are placed, and so on, but my guess is that we will find agreement on ways to accomplish essentially the same results. I very much appreciate such a distinguished panel of Marylanders appearing before us, and I thank you.

Next we have Mr. George Argyros, Seattle Mariners, and Mr. Don Fehr, executive director of the Major League Baseball Players Association.

Senator Gorton.

Senator GORTON. Mr. Chairman, I would simply like to introduce to you, George Argyros who is the owner of the Seattle Mariners. He has followed the progress of the predecessor bill and of this bill with great care and sympathy, his testimony will be somewhat at variance with the formal testimony of Major League Baseball.

He has been very good for our community since he has purchased the Mariners. He is struggling against some fairly difficult challenges to give the city of Seattle the kind of baseball it would like to have, and the kind of baseball team your St. Louis has had for many, many years. I am pleased to welcome him here and to introduce him to you.

The CHAIRMAN. Mr. Argyros, I apologize for mispronouncing your name, and I am glad you are here. Please proceed.

STATEMENT OF GEORGE ARGYROS, OWNER, SEATTLE MARINERS

Mr. ARGYROS. Thank you very much, Mr. Chairman, and Senator Gorton.

I have owned my interest in the Seattle Mariners since 1981, and during that period the Mariners have accumulated cash losses approaching $25 million. The Seattle Mariners franchise came into existence through the grant of an expansion franchise in 1976, with the first season being 1977.

You may recall that prior to that time, in 1969, Seattle had previously been granted a franchise which was known as the Pilots. After only one season, the Seattle Pilots franchise declared bankruptcy and the franchise was moved to the city of Milwaukee, and it is today known as the Milwaukee Brewers.

I love the Pacific Northwest and I want the Mariners to remain there, but the Pacific Northwest, like many other areas in our country, will have great difficult keeping a major league baseball franchise under the existing structure and economics. Some problems are unique to the Pacific Northwest and I shall not dwell on these here. But the major economic problem, as it is with so many other areas like it, is that it is not in a major media market.

I would also like to say at the outset that anything contained in my testimony should not be construed as being contrary to the testimony of the official representatives of baseball. I fully support the commissioner's statement and I believe that baseball has done an admirable job of self-policing with respect to franchise stability, financial stability is another question.

Both S.259 and S.287 set forth laudible goals: To discourage the unnecessary relocation of professional sports teams which receive adequate suppport from the people in their communities, to encourage continuity and stability in the location of professional sports teams, and to preserve stability in the relationship between professional sports teams and the communities in which such teams may successfully operate.

These goals are supported, I believe, by major league baseball. However, I do not believe that the legislation as presently written will achieve these goals. We all would prefer no government interference but, on the other hand, if you are to pass legislation, I want to encourage you to consider a major issue relating to franchise stability in baseball, and that issue is broadcast revenue sharing which has two prongs—local broadcast revenue, and television super station.

The simple fact is that the Mariners, and I believe a large number of other major league baseball teams, can meet the criteria for relocation set forth in either of these bills. The key element in franchise stability is not addressed, and the key element is broadcast revenue.

Unless major league baseball broadcast revenues are distributed more equitably as they are in other professional sports leagues, I believe that we shall see a number of major league baseball teams forced to consider relocation, and instability of team ownership accelerating.

Let me illustrate, if I may, the broadcast revenue problem. Our revenues from broadcast, radio and television, were $1.1 million in

1984. It has been reported that there are baseball franchises in media centers, such as New York and Los Angeles, with local broadcast revenues of 10 times that amount. No matter what the precise dimension of the differential may be, this disparity exists and is not unique to the Mariners. It is present in varying degrees in many of baseball's smaller markets.

It is a clear fact that the major media markets can generate significantly greater local broadcast revenues. If this disparity continues, teams in major media markets will have sufficient revenues to pay ever-increasing, multimillion-dollar-player contracts, while the others will struggle along, losing money, having difficulty bidding for top talent, perhaps eventually being forced to consider relocating in cities which will offer lucrative enough incentives and subsidies to offset operating losses. This is neither healthy for baseball, nor is it in accord with the intent of your proposed bills.

Next let me touch on the issue of ownership of major league baseball teams by super stations. The ownership of baseball teams by super stations further contributes to the imbalance in major league baseball. The nationwide distribution of gains by third party resale carriers devalues my particular TV rights in the Northwest and affects attendance.

The teams owned by super stations also have the ability to absorb huge operating deficits which can be subsidized by the super stations as alternative programming. This phenomenon artificially increases operating expenses; namely, player salaries for everyone. As operating expenses go up, games are more susceptible to being enticed away from the community in which they are playing by lucrative incentives from other communities.

I do not believe this to be healthy for baseball nor for the communities in which the teams are located. Baseball becomes just another programming option, a cost of doing business, rather than the owners making a commitment to baseball and the communities in which they are located.

Baseball, in a sense, is a public trust. Again, let me illustrate. I understand that the price that the television station must currently pay for a season of "Magnum P.I." reruns is about $25 million. This provides approximately 30 hours of programming during 1 year.

Alternatively, if a station buys a baseball franchise and it can generate over 20 hours of programming per week year after year as a result, that team can pay higher salaries and absorb $6 to $10 million operating losses a year, subsidized by sponsored, by sister businesses.

Revenue sharing has worked successfully in the NFL. It is responsible for the survival of teams in small and medium size communities, for example, Green Bay, WI. It will have the same effect on major league baseball, and I believe equitable revenue sharing can solve franchise instability while not jeopardizing competition among teams, either for wins or for players.

I am a relatively new owner. I have served on the Major League Revenue Sharing Committee, the Restructuring Committee, the Commission's Selection Committee, and the Board of Directors of the American League. There is no question but that the issue of revenue sharing needs to be addressed.

In closing, I want to commend you, Chairman Danforth, and Senators Gorton and Eagleton for their strong interest in the success and stability of major league sports. I believe that it is an important subject, and I am pleased that the Senators of this committee share that belief.

I support efforts to stabilize franchises in major league baseball, and I would urge that broadcast revenue sharing and the super station issue be addressed in any bill that might be reported out of this committee.

With such legislation, we can achieve true franchise stability in major league baseball not only for communities that apparently have franchises, but also for communities which will acquire franchises in the future. Their investment will be safer, and their communities better served.

Baseball is a fabulous sport. Let's retain this great game as a sport. I appreciate the opportunity of presenting my views today.

The CHAIRMAN. Thank you, sir.

Mr. Fehr.

STATEMENT OF DON FEHR, EXECUTIVE DIRECTOR, MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Mr. FEHR. Thank you, Mr. Chairman.

First of all, I would like to request that my prepared statement be entered in the record. In lieu of going over that, I would like to make a few comments and address myself to some of the concerns that have been raised here today.

First of all, let me say that as representatives of the players' union that has to deal with an ownership that has lived within the privileged sanctuary of no antitrust scrutiny for all these years, I think we know certainly as well as and perhaps better than anyone else the kind of attitude that produces.

Second, I didn't grow up in New York where I live now. I have only been there a few years. I grew up in Kansas City, and that gave me a certain perspective as to the problems that most cities face, and in particular the problems of teams threatening to leave, as indeed the Kansas City A's did when they went to Oakland.

In my judgment, and as my prepared statement suggests, and testimony that we have given to prior committees which considered this question states, the real problem is artificial scarcity. The only reason teams leave is that there are other places that don't have teams and that are willing to make offers of whatever size are necessary in order to have one. That is caused in our judgment by one thing and one thing only: the specialized and privileged antitrust status which allows monopolists to do what they always do, that is, to artificially restrain resources to drive up prices.

I was interested to listen to what Mr. Argyros just said for a couple of reasons. First of all, we don't think that any additional antitrust immunity should be given to the ownership of teams in connection with any of these problems. If anything, it should be restricted.

The revenue sharing problem of which Mr. Argyros speaks suggests that because baseball is completely immune from any antitrust scrutiny, he is a victim of precisely that antitrust immunity

that baseball has. This is an interesting circumstance not often coming before the Congress in that fashion.

Second, with respect to losses, I would ask the committee to consider the following: I don't think that baseball teams lose money, but I don't know and I suggest that no one else here does either. I suggest that if the Congress wishes to take at face value any statement with respect to team operating profits or losses, what they must do is secure and evaluate the kind of information which heretofore has never been given to the Congress. You have to have the books and you have to have the records. You have to be able to do audits or you can't know what you are dealing with.

I will say that in 1980 and 1981, and again this year, in collective bargaining, various statements have been made by various owners, including some this year on their negotiating committee, to the effect that baseball has serious financial problems which need to be addressed. But when we say, all right, prove your problem, show us what your problems are so that we can bargain and take that into account, we are refused and told that there are no financial problems. We can't see the books unless they consent to produce them.

I would point out that in the last round of collective bargaining, the NBA owners voicing such problems dumped the books on the NBA Players Union and insisted that they look at it, which is what we think happens when you do have financial problems.

Just briefly, there are two things that I want to comment on in addition to the matters that were mentioned in my prepared statement.

First of all, the problem of artificial scarcity in baseball in particular is not remedied by any kind of a small expansion. All that does is to create a massive bidding war between the 8 or 10 cities out there that might want the 2, or 3 or 4 teams. It drives the prices up that way, and in a sense it plays into the hands of the people that are trying to sell the right to operate franchises.

How do you get around that? I suppose you could consider mandating wholesale expansion, but then the Congress would have to be willing to be confronted with pleas from municipalities every other year for additional expansion for the cities that didn't get a team. I suggest to you that there is a far easier, far more practical, and time honored way in this country of doing that and that is to promote competition. I would just ask you to consider the following.

Were baseball's antitrust exemption to be eliminated, either through congressional action or court action, and the American and National Leagues to be broken up into two or more entities, what you would then have is two or more entities competing with one another for a valuable, potential market, be it Tampa, Denver, New Orleans, or any of the other cities on this continent that might be in that capacity.

I suggest to you that what that would result in is simply a better deal for the city because two businessmen, if you will, at least two, would be competing to give Tampa the best deal, or to give Seattle the best deal if it didn't have a team, and not the other way around.

As it is now, and as it would be under any of the bills under consideration, cities will be required to compete against one another,

and that quite frankly is the evil which has caused us all to be here all of this time.

One other brief comment, and then I will conclude.

We don't know whether major league baseball anticipates or plans expansion. What we do know is that the history demonstrates that baseball expands only when forced to do so. The 1968 and 1969 expansion occurred, quite frankly, as I understand it, because Senator Symington insisted upon it after the A's left for Oakland.

The 1976 expansion in Seattle and Toronto occurred, quite frankly, because Senator Gorton, in his then capacity as attorney general of Washington State, insisted upon it as part of the settlement of a law suit. It has not come because the public good is served thereby. It only comes under duress.

I must say that it affects us because it costs the players jobs. We have asked throughout the current collective bargaining, which is now nearly 4 months old, repeatedly for information as to the owners' plans on expansion because we think that it is important and we want it. We think that there are cities that need it, and it is important to our members.

As of yesterday, in a collective bargaining meeting, again I asked specifically with reference to my appearance here today, whether I could represent to the committee that baseball is willing to make any commitment to expand. Not to have plans to expand if they want to and decide to later on, but to make any commitment to expand. The answer was, no, they are unwilling to so make any commitment. That attitude, quite frankly, is occasioned by people who have too long had monopoly power, and are used to the exercise of it.

This is all I have to say, and I appreciate again the opportunity to appear here.

STATEMENT OF DONALD M. FEHR, ACTING EXECUTIVE DIRECTOR AND GENERAL COUNSEL, MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Mr. Chairman and members of the committee, my name is Donald M. Fehr. I am the Acting Executive Director, and General Counsel of the Major League Baseball Players Association (MLBPA), the exclusive collective bargaining representative for all major league baseball players. Since August 1, 1977, when I became the MLBPA's General Counsel, I have been actively involved on a day-to-day basis in the negotiation of, and administration of, the various collective bargaining agreements between the Players Association and the 26 major league clubs. On behalf of the MLBPA and its member players, I welcome and appreciate this opportunity to present the following comments and observations to this Committee with respect to the pending sports team relocation legislation.

We understand and sympathize with the Congressional concern over the arbitrary movement of professional sports franchises. Given recent experience, it comes as no surprise to us that legislation restricting such movement has been introduced repeatedly in recent years, and is again under serious review and consideration by the Congress. However, for the reasons stated below, we do not believe that the current legislation will ultimately serve the twin goals shared by all save the team owners: (1) Stability with respect to existing franchise location, and (2) creation of a system in which municipalities capable of supporting franchises have a fair opportunity to secure such franchises without having to pay existing team owners through the nose to do so.

Simply put, there exists an artificial scarcity of franchises, and so some cities must always do without a team, a circumstance which benefits only existing team owners. That artificial scarcity is caused and maintained by the special, and unwarranted, antitrust treatment afforded the NFL and Major League Baseball. That is the problem which should be addressed by the Congress. Until this is rectified, cities

will continue to divert an excessive amount of the public's financial resources to take advantage of any and every available means of attracting an existing or expansion club to its metropolitan area.

Both the NFL and Major League Baseball have historically operated as classic cartels. For all practical purposes each is a monopoly, although for historic reasons baseball's monopoly is both much tighter and much more secure. These monopolists act in their collective monopolistic interest, as one would expect: they divide among themselves territorial markets (i.e., city locations) and their needed players (the amateur drafts and reserve systems). Thus, the cities must dance to the owners' collective tune, or risk losing an existing franchise, or never acquiring one in the first place. A brief recounting of history establishes the record in each sport.

In football, where there have been successful competing leagues, the NFL has merged with that league (or some of its franchies) to eliminate the competition and reestablish its monopoly status. Thus, when it became apparent that the American Football League was here to stay, the AFL and NFL owners, desiring to form one big monopoly, secured in 1966 Congressional approval for their merger. The principal effects of this merger were two: expansion slowed to a crawl, where it still remains, and competition for players ended. Can anyone doubt that if the AFL and NFL had remained separate, and had competed with each other for potential territorial market sites in cities not yet having teams, that the expansion of the early 1960's would have continued?

The key to the football franchise in the early 1960's with the AFL was that two sound leagues were competing with each other for valuable franchise locations. Since the merger, the situation has been that those cities without teams must come begging to Pete Rozelle's door, only to be repeatedly turned away, with directions to make a better, more lucrative offer, so that perhaps their plea will be reconsidered. Thus, we have the ultimate absurdity, demonstrated by the NFL's ridiculous position in the Oakland Raider situation. There, the NFL insisted that: (a) it was entirely appropriate for the Rams to leave Los Angeles for Anaheim; but that (b) it was entirely inappropriate for Los Angeles to have another team, unless and until the NFL decided to award LA an expansion team. The NFL's action should have surprised no one. It was merely acting to protect the monopoly interest of the Rams in Los Angeles. Then, when the NFL lost the Raider antitrust case (one of the great non-surprises of antitrust law), it had the audacity to again return to the Congress and ask for additional special antitrust protection, and threatened never to expand unless the Congress caved in to the pressure.

Major League Baseball has had a complete antitrust exemption ever since the ill-considered *Federal Baseball* case in 1922. Has this exemption contributed to the public interest in the areas of franchise movement and location? Consider the following; over the years, numerous major league baseball franchises have been moved to greener pastures. Most of these moves have occurred within the liftimes of most adult Americans. As everyone remembers, the Brooklyn Dodgers left Brooklyn for Los Angeles. In addition, however, the New York Giants moved to San Francisco; the Washington Senators to Minnesota; the Washington Senators (expansion team) to Dallas; the Boston Braves to Milwaukee; the Milwaukee Braves to Atlanta; the Philadelphia Athletics to Kansas City; the Kansas City Athletics to Oakland; the St. Louis Browns to Baltimore; and the Seattle Pilots to Milwaukee.

Did these teams move over the objection of the American and National Leagues? Of course not. If one wants to know the attitude of major league owners with respect to team moves, one must only remember that each and every franchise relocation in major league baseball was sanctioned by the League. And in each instance, the municipality that lost a club was tossed into an increasing pool of communities seeking to attract new franchises through either the relocation of an existing franchise or the creation of an expansion club. All such cities are required to come begging to baseball, hat in hand, for the opportunity to discuss the remote possibility of an expansion franchise.

In his prepared statement before this Committee earlier this month, the new Baseball Commissioner, Peter Ueberroth, asserted that baseball's policies with respect to both relocation and expansion have served the public interest, and that accordingly no Congressional action is warranted. That is patent nonsense. With all due respect to the new Commissioner, the record belies this claim. One need only review the events of last summer with respect to the Minnesota Twins to demonstrate just how ridiculous that assertion is. Throughout most of last year, the Griffith family was openly threatening to move the Twins to Denver. They sought ever more lucrative terms from Denver, and then turned around and insisted that Minneapolis-St. Paul match such terms or lose the team. All summer long, the citizens of both Denver and Minneapolis-St. Paul were kept guessing, with the price ever

rising. But, Senators, one must ask: What did the American League say with respect to this unfolding soap opera? Did the American League assure the citizens of Minneapolis that a relocation would not be approved? Did Major League Baseball promise Denver an expansion franchise? On the contrary, American League and Major League Baseball officials were most conspiculously silent, and by that silence aided the Twins ownership significantly in this summer long game they were playing with the citizenry of two American cities. Of course, the game was not an equal contest. The Twins could only win. The cities could only lose.

The foregoing demonstrates that artificial scarcity of franchises can be nothing other than a deliberate policy of the NFL and Major League Baseball, and for good reason: the owners profit by maintaining it. Simply put, were there no Denver to threaten to move to (Because Denver, clearly a "major league city" already had a team), the owners could not coerce concessions from existing franchise cities and/or potential expansion cities. It is the artificial scarcity of teams that producers the power that team owners employ against municipalities. It is the special antitrust treatment afforded the NFL and Major League Baseball that makes maintenance of this artificial scarcity possible. We have the antitrust laws specifically to prevent this sort of inordinate market power from being exercised to the detriment of the public.

The bills before this Committee would greatly restrict the ability of teams to relocate. Yet, one must realize that the preclusion of teams from arbitrarily relocating does not solve the overall problem; it only provides a band-aid approach. There remains the issue of the have-not cities. Moreover, the pending bills seem to address the problems extent with franchise location and relocation by a complicated attempt to partially regulate a monopoly (with respect to relocation, and to a limited extent, expansion); an attempt which we feel must ultimately fail. A more obvious and more simple solution should be adopted instead: Congress should eliminate the monopoly power of Major League Baseball and the NFL.

Today, most of the cities that wish to attract an NFL or Major League Baseball franchise possess the financial and human resources necessary to successfully support a team. But, as Senator Biden pointed out during Senate Judiciary Committee hearings on relocation legislation in September, 1982, the relocation question is unfortunately a zero-sum game entirely controlled by league officials. That situation must, of necessity, continue as long as the number of franchises is artificially restricted. Each expansion location decisions and each relocation decision will result in the residents of one city being pleased by a given decision granting to that city an expansion franchise or relocating an existing franchise to it, while the citizens of each other city seeking a term will again be disappointed and frustrated. Certainly, the present system, where the policy of choosing the haves from the have-nots is made in the confines of owners' meetings (in smoke filled back rooms or otherwise) is ridiculous. But the proposed legislation does not meaningfully address the articial scarcity problem, and, to a certain extent, institutionalizes the owners current market power. Moreover, can one doubt that the principal effect of this legislation will be to inundate the Congress with pleas from the have-not cities to again and again require expansion? Should it be the Congress that chooses which cities have teams?

To reiterate, the current situation works to the advantage of team owners and to the disadvantage of cities in two different, yet equally troublesome ways. In the first, a club proposing to relocate derives inordinate concessions from local governmental officials desperate to keep the team in its present location, as occurred last year when the NFL's Philadelphia Eagles threatened to move, and Baseball's Minnesota Twins threatened to relocate. In the socond, cities bid against each other to acquire scarce expansion franchises. This is apprently taking place now in Major League Baseball, as cities vie with one another to make enough concessions and to give sufficient inducements to secure an expansion team.

Simply put, the proposed legislation should not be enacted in the current form because it institutionalizes the status of the current have-not cities. It is really the business of the Congress to legislate the permanent location of sports teams, especially when such action makes it far more difficult for have-not cities to acquire teams? Consider how the combination of a restriction of team movement coupled with limited expansion works to the distinct disadvantage of the have-not cities and to the considerable advantage of team owners. In baseball, we can expect that the owners will announce that, reluctantly, they will expand by two teams as suggested (required?) by the Congress. What will then happen? The owners will advise the waiting cities (at least consisting of Denver, Indianapolis, Miami-Fort Lauderdale, Tampa-St. Petersburg, Phoenix, Memphis, Washington, D.C., Louisville, New Orleans and Buffalo, not to mention Vancouver) that each should make as offer, a proc-

ess that will be repeated again and again until all cities save two must bow out of the bidding, and franchise will be then awarded to the two areas offering the existing owners the sweetest package. That pattern would then be repeated with each subsequent expansion, which history demonstrates will be infrequent, with new, growing cities each time entering the picture to bid for this most scarce of municipal assets. Locking existing franchise in place and having a limited expansion means simply most of these cities will always be have-not cities. Is that result in the public interest?

Moreover, we must question both the long-run viability and public policy behind the approach suggested by the pending legislation. Baseball and football are businesses, and one would think they should have the same right as other businesses to relocate. Without question, relocation of industrial plants from the northeast and midwest to sun belt (predominately non-union) states has had a devastating effect on the communities losing those jobs, but no one has suggested that merely because a steel concern once located in the midwest, the locality in which it operated had a perpetual right to retain that business in that area. If this type of legislation is to be applied to sports teams, should it not also be applied to the plant that locates in a given community due to preferential tax treatment? Sports teams, just like other businesses, should be required to operate both within and pursuant to a free market, with all of the advantages and disadvantages of the free market system.

To take an example, suppose the Dodgers could not have moved from Brooklyn. That, of course, would have made many New Yorkers ecstatic (as they would also be if the Congress required the Dodgers to move back!). But consider: under that scenario, would there now be teams in Los Angeles? Perhaps yes, but, then again, perhaps not. Should it not be a free market, rather than an owners monopoly or recurrent legislative battles, that determines where franchises are to be located and how many there should be?

How may that goal be accomplished? The MLBPA believes it can easily be accomplished by requiring the owners to comply with the antitrust laws. We suggest:

(1) Elimination of Baseball's blanket antitrust exemption and repeal of the AFL-NFL merger bill, effecting the result that the NFL and Major League Baseball would have to justify their current structures as reasonable and not anticompetitive under Sections 1 and 2 of the Sherman Act. This would most probably result in the Leagues being broken up into two or more separate entities, which would then compete with each other for, inter alia, new franchise locations.

(2) After due and diligent study, the Congress should require expansion in baseball and football as appears to the Congress to be reasonable and appropriate in order to rectify the anticompetitive effects of the prior artificial scarcity of franchise.

We believe that enacting the foregoing legislation will result in the goals sought by all (Save the club owners) without putting the federal government in the business of regulating professional sports. The solution to the artificial scarcity problem is to eliminate the special antitrust treatment which makes it possible. When franchises are no longer artificially scarce, there will be no cities from whom exorbitant concessions can be secured, and stability (save only in the case of bona fide economic problems) will be promoted, i.e., the Twins could not meaningfully threaten to move to Denver if there already was a team in Denver. Further, if a municipality is capable of supporting a team, we can expect to see two or more viable leagues competing to locate a franchise there, which is the opposite of the current situation in which cities must always tug and pull with one another to the benefit of no one but the owners.

Finally, a few comments about planned expansion in Major League Baseball. As anyone who has studied the record knows, Baseball expands only when forced to do so. In the late 1960's after the Kansas City A's moved to Oakland, expansion took place in no small measure because Senator Stuart Symington from Missouri insisted upon it. In 1977 the American League expanded to Seattle and Toronto because, as I understand it, that was required by the terms of a settlement of a lawsuit against the American League initiated by Senator Gorton, then the Attorney General of Washington State (the settlement being secured while the the jury was out). Since 1976, the National League has had the right to expand to two additional teams pursuant to a provision in the MLBPA-Major League Clubs Basic Agreement. No movement to expand has been forthcoming.

The players are very interested in expansion. The artificial restriction of franchises hits the players hard—it means simply that jobs are artificially restricted. Thus, in the current collective bargaining which began last November, the players have repeatedly asked for expansion information, and have repeatedly expressed their desire to have significant expansion in the next several years. However, the

owners, as of the date this Statement was finalized (18 February 1985) have refused to respond, except to suggest that they would like the right to expand, when, as, and if they choose to do so, but are unwilling to make any committment to expand. Thus, it was with surprise that I read of the suggestions of Baseball's representatives before this Committee earlier this month that expansion was imminent. We hope that is true, but have seen no evidence yet to support that notion. If expansion is indeed imminent, we believe it is so due to the increasing public awareness, as evidenced by the comments of several Senators and Congressmen, that Baseball's owners have ill-served the public by artificially restricting the number of franchises.

When I was a political science student, I often heard that the most exclusive club in the country was the United States Senate. Now I know better. Being the owner of a Major League Baseball or NFL franchise puts one in a much more exclusive and iimited club. The members of that club have for much too long taken unfair advantage of their privileged status. Public policy should not be made in owners' meetings.

I would be pleased to respond to any questions the Committee may have.

NOTE.—With respect to the elimination of the baseball exemption generally, and its effect on major and minor league baseball players, I respectfully refer the Committee to my testimony before the Senate Judiciary Committee on 20 September 1982, and to the testimony of the MLBPA's former Executive Director, Marvin J. Miller, before the House Judiciary Committee in February of 1982. See also *Flood* v. *Kuhn*, 407 US 258, 286 (1972) and the dissenting opinions of Justices Douglas and Marshall; and the "Final Report of the House Select Committee on Professional Sports (1976)," which flatly call upon the Congress to eliminate the baseball antitrust exemption.

The CHAIRMAN. Thank you very much.

Senator Gorton.

Senator GORTON. Mr. Fehr, when you describe the increased competition which would result from the removal of baseball's antitrust immunity, don't we have a perfect example of what happens in the absence of that antitrust immunity, at least with respect to the relocation of franchises in the history of the National Football League in the last 3 or 4 years, both the two rather arbitrary moves which have taken place and the other that are threatened? Isn't that precisely what would happen in baseball under those circumstances?

Mr. FEHR. I have three responses to that. First of all, in my judgment, it was the NFL-AFL merger which created the artificial scarcity problem in the first place because the expansion which had been rampant and successful in the early 1960's stopped after the merger.

Second, it allowed the NFL to get into the ridiculous position of saying it must permit the Rams to leave Los Angeles, but could not permit the Raiders or anyone else to move into Los Angeles. That is the kind of two-pronged approach which guaranteed, in my judgment, that they would fail in court.

Third, I am not suggesting that removal of the antitrust exemption needs to be distinct from and in lieu of the kind of legislation requiring leagues to consider local public interest and history. I suggest there may well be ways to merge the two in a fashion which would protect both legitimate interests.

Senator GORTON. Thank you.

I take it that you are opposed to the revenue sharing of the kind advocated by Mr. Argyros here. Is it your feeling that a situation in which revenues—revenues which depend on the size of communities—are greatly disparate in nature as to the benefit of the players as opposed to something which allows teams to have at least

some kind of rough equality in revenues, or at least a degree of difference based only on their performance on the field?

Mr. FEHR. In so many of these kinds of discussions, terms are assumed to have one meaning and one meaning only. If you would say, are you opposed to revenue sharing the way it is done by the NFL, the answer would be, yes, because as a practical matter all revenues are shared equally, therefore, there is little or no incentive to make investments in players or otherwise to provide a better product. That depresses salaries for players. There is no doubt about that, and we think that is wrong.

Second, would I be opposed—or would the Players Association be opposed—to revenue sharing in baseball of some kind, perhaps less stringent than that, perhaps dividing only certain revenues on a given basis, the answer is, I don't know. I will have to look at it.

I will say that we are about to have, and have had since 1984, a far greater revenue sharing in major league baseball than ever before because of the national TV package. It was just under $47 million a year through 1983, and it is divided equally among the clubs, with a certain amount going to the players pension financing. That new figure over the next 6 years averages about $180 million a year, and is also shared equally.

I guess the short answer is that I would have to look at the specifics of any proposal. If it got close to the NFL level, probably we would be opposed to it. Something short of that, we would have to look at. We have absolutely no interest in making it economically unfeasible for franchises operating counterproductively for the players. .

Senator GORTON. I would appreciate your looking at the specific proposals that Mr. Argyros comes up with and any response we have to them, and submitting your comments to us on them.

Mr. FEHR. If he will send them to me, I will be most happy to review them.

Senator GORTON. Mr. Argyros, when you expressed these concerns about the disparity in the television revenues and the power of superstations, are these your concerns only, or have you discussed them with any substantial number of other owners in major league baseball?

Mr. ARGYROS. I discussed them with many owners in major league baseball, and just to name a few, the St. Louis Cardinals are in support of it, the Kansas City Royals, the Milwaukee Brewers, the Oakland A's, the Chicago White Sox, the Minnesota Twins, the San Francisco Giants, the San Diego Padres, the Houston Astros, the Pittsburgh Pirates, the Cincinnati Reds, the Texas Rangers, and the Cleveland Indians. I think, in essence, the majority of the smaller markets have this problem, and it is a severe one for the industry.

Senator GORTON. Therefore, the direction of your testimony would be supported by the teams you have named?

Mr. ARGYROS. Yes; they would be supportive, I believe. I think that perhaps it would be appropriate to even think about Mr. Turner, who in 1982 appeared before the committee in a hearing on cable TV. Just to refresh your memory, I have a quote from him.

What Mr. Turner said—I have not talked to him, obviously: "I have been a strong proponent of revenue sharing in baseball similar to the NFL's, but the wealthier teams in baseball, like the Dodgers and the Yankees, have been adamantly opposed to it and continue to do so. Unless baseball adopts revenue sharing, the economic differentiation between the weaker and smaller city teams, like Pittsburgh, Atlanta, Cincinnati, Kansas City, and the large market teams, this disparity will continue to grow until the smaller town teams will dry up and go away." This is a quote from Ted Turner in 1982 before your committee.

Senator GORTON. If, in fact, the majority of the teams, the have-not teams in the smaller cities, support the ideas which you outlined, why don't they exercise their majority rights and impose them within the structure of major league baseball that exist now?

Mr. ARGYROS. That is very logical, Senator, and I have been wondering about that same question since 1981 when I got involved. It is complicated, and part of the problem is the voting procedures—we have restructured that now—which required a three-quarters vote from each league. It was just set up so that the major metropolitan areas rather controlled it.

The other thing is, we just didn't have the leadership in major league baseball, and my personal view at the time to correct this inequity. I believe now, with the new commissioner, the new voting rules, and the new restructure, we will be able to attack some of these disparities and bring some stability.

I think that it is an issue, the revenue sharing from broadcast, that needs to be aired and made more public because the game is a public trust. We need to solve it so that we can be viable.

Senator GORTON. Thank you, Mr. Chairman. My time is up.

The CHAIRMAN. Mr. Argyros, I agree with the results you seek, but I am not sure about the means to accomplish it. I think that the concept of revenue sharing is important. With respect to leagues, other than major league baseball, the intent of this bill is to put the other sports in the same position as major league baseball, that is, able to enter into revenue sharing agreements if they want to with respect to pay TV or with respect to any new technology in addition to network broadcast.

It seemed to me that there are some things that should not be done in Washington, that Washington should enable sports to enter into such agreements. Basically what we should do to the greatest extent possible is to leave the actual governance of the sport to the league itself rather than for us here in Washington to have to make that decision.

I would hope that major league baseball could work out the kind of arrangement that you anticipate, but I would hope that it would do it on its own, and not have us somehow mandate a scheme of revenue sharing.

Mr. ARGYROS. I would hope that that could be true, Senator. I think that it would be in all of our best interest if baseball would regulate itself.

Up until now, we have not done a very good job at being a monopoly. We are unable to control our costs, and I know that Mr. Fehr would like to represent them otherwise. We are a very bad

committee in that sense. Player contracts have escalated substantially over the last several years.

The CHAIRMAN. I don't want to get into that issue right now.

As I understand it, your testimony is that you believe that with respect to the transfer of franchises, major league baseball has done a pretty good job of regulating itself, and it has provided stability. With respect, however, to the revenue sharing aspect, this is where you would hope to have improvement.

Mr. ARGYROS. Baseball has done a very good job in my view compared to other sports. I just see on the horizon an accelerating pace in national instability, and we really have to address it. Otherwise, I think, there are going to be many teams that have very serious problems. It is a serious issue that we need to address. We hope that we can do it within baseball, but if you do pass legislation, I hope that you would consider revenue sharing for baseball in the sense of local broadcast.

The CHAIRMAN. Let me ask you this. If there is no revenue sharing with Super TV, pay TV, does this almost necessarily mean that some teams are going to be much, much more profitable, much richer, if you will, than other teams, and that they would then be able to just buy up all the best players they can find?

Mr. ARGYROS. I can't speak of them being more profitable, however, I think that they would have more resources to spend. Because of the complex nature of the player contracts situation—that is not an issue here and I am not trying to bring it up—it is very complicated. I think what it would mean is that, in fact, smaller markets just could not afford to pay better players, and would have to send them to the New Yorks, the Los Angeleses, because of the heavy media, and that would be terribly unfortunate for the game.

The CHAIRMAN. Gentlemen, thank you very much.

Finally, we have a panel consisting of Steve Katich, Denver Baseball Commission; Frank Smith, chairman, D.C. Baseball Commission; and George VuKasin, Board of Commissioners, Oakland Coliseum.

Mr. Katich.

STATEMENT OF STEVE KATICH, EXECUTIVE DIRECTOR, DENVER BASEBALL COMMISSION

Mr. KATICH. Thank you, Mr. Chairman. My name is Steve Katich and I am the executive director of the Denver Baseball Commission.

Denver's desire for a major league baseball franchise is based upon the economic impact it would have on our community, as well as the pride it can help to instill in the people of our city. In Denver, the potential economic impact of a major league baseball franchise is estimated to be $75 million annually. Just this week, the Sporting News reported that a recently completed study in Philadelphia indicated that their four professional sports teams generated at least $574 million annually.

Yet the quest for a major league baseball team for Denver is tempered by the recognition that there are very real problems confronting the professional sports community today. Two of the most

pressing problems are addressed by the legislation currently under review by this committee: franchise relocation and expansion.

Certainly, the Denver Baseball Commission has no philosophical disagreement with the need for franchise stability in professional sports generally and expansion in baseball specifically. Thus, the debate of your committee will really focus on the manner in which the stated purpose of the proposed legislation can best be implemented.

First, let us look at the issue of franchise relocation. The recent spate of actual as well as threatened relocations of franchises is a problem of grave concern to all cities and fans. Commitments by municipal governments and their citizens to expend millions of dollars on the construction and maintenance of facilities deserve protection from owners who simply abandon home town fields for greener pastures.

However, these relocations have often come over the objection of the leagues themselves. The problem has not been the intent of the league to prevent location, but rather its legal inability to do so.

The Denver Baseball Commission believes there is a growing consensus among professional sports leagues that recognizes the very real and increasing dangers, both short- and long-term, of franchise relocations. We believe that this committee, along with all professional sports leagues, would agree that if team owners are allowed to relocate their franchises at will, everyone will ultimately lose.

The bond between a fan and his or her team would become nonexistent, resulting in a diminishing interest in sports across the Nation.

As a city that is yet to enjoy major league baseball, we would certainly listen attentively if that league gave any indication of an intent to look at franchise relocations. But the fact of the matter is, baseball is not doing so.

It may seem incongruous that a representative from a city seeking a major league baseball team would agree with the league that publicly and privately discourages relocation. But we believe that instability in any sport, including baseball, is more dangerous.

We believe that baseball, with its antitrust exemption, has demonstrated its responsibility to its current fans on the issue of relocation for the most part, and that other professional sports would likely be the same if they were offered similar protection.

Baseball has demonstrated the appropriateness of the old saying, "If it ain't broke, don't fix it." We believe the same incentives exist today in other sports for promoting stability.

The Denver Baseball Commission is interested in the section of Chairman Danforth's bill that will grant leagues the power to enforce their own rules as they relate to franchise relocation and revenue sharing. It is a concept we believe bears further study.

If combined with a prudent and thorough screening by existing owners of all future owners, other professional sports leagues might begin to reach the same level of stability currently enjoyed only by major league baseball.

We believe the ability to enforce legal rules and regulations, when combined with the recognition by sports leagues of the need for quality ownership interest, will result in increasingly stable sports leagues.

While it is still possible that Denver will secure a major league baseball franchise through location of an existing team, expansion is considered to be the most likely route for Denver. That is why the section of Senator Gorton's bill mandating expansion for baseball in 1988 is the most intriguing to our commission.

Its importance is magnified for our community if one believes the many observers who list Denver as being in at least the top two of potential new sites for major league baseball.

However, we believe the congressional legislation mandating expansion is, from a public policy perspective, improper. It could, in fact, ultimately prove to be counterproductive to the long-term goals of both the sport and the communities this legislation seeks to protect.

We would also submit that the desire of major league baseball to maintain its relative stability has already resulted in their recognizing that expansion is necessary, inevitable, and in the economic best interests of the sport.

As a result, congressional intervention at the present time is not only unnecessary, but would also set a dangerous precedent by dictating the time and place for growth in professional sports leagues.

We come before your committee with the understanding there are no easy answers or quick fixes to these difficult issues. Today we express an opinion based upon our sincere belief that the interests of professional sports leagues and municipalities are increasingly consistent with one another.

The Denver Baseball Commission believes that if other professional sports leagues were granted the same authority to enforce their league rules as does baseball, the primary beneficiary would be the fan.

However, our recommendations are also made with the understanding that if professional sports leagues abuse these legislative grants of power by ignoring the concerns of the municipalities and their fans, congressional intervention would be the inevitable result.

The Denver Baseball Commission does not believe that the leagues will permit such a situation to arise, as the real casualty in such a case is likely to be the dedication so many Americans have to professional sports.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF STEVEN H. KATICH, EXECUTIVE DIRECTOR, DENVER BASEBALL COMMISSION

Thank you for the opportunity to speak to the Senate Committee on Commerce, Science, and Transportation concerning the issues addressed in Senate Bills 259 and 287.

My name is Steven Katich and I am the Executive Director of the Denver Baseball Commission. For six years prior to my accepting this position, I was a practicing attorney initially in Washington D.C. and most recently in Denver. As the Executive Director of the Baseball Commission, I have been asked by Senator John Danforth to present testimony on the proposed "Professional Sports Community Protection Act[s] of 1985" from the perspective of a city seeking a major league baseball franchise.

Before I begin my remarks, I would like to read a letter to the Committee from Denver's Mayor, the Honorable Federico Peña, summarizing the economic and cul-

tural impact baseball would have on Denver, and why the acquisition of a franchise is an integral part of Denver's overall growth.

DEAR SENATOR DANFORTH: As the Mayor of Denver, I am pleased to have the opportunity to include this letter in the testimony of the Denver Baseball Commission's Executive Director Steven Katich, concerning the importance the acquisition of a major league baseball franchise will have on our growing and vital city.

All of us who are baseball fans can understand the tradition and romance of America's national pastime.

But the economic impact of a major league team in Denver is also something we can appreciate.

A study commissioned by the Denver Chamber of Commerce has put actual figures to this economic impact.

$75 million new dollars brought to Denver annually.

Over 300 new jobs created in Mile High Stadium alone.

Nearly $2 million directly to the City of Denver from sales, lodger, seat and parking taxes.

Major league baseball in Denver is also a vital part of the overall development of our city. We have recently begun work on a 300,000 square foot convention center, a new airport which will eventually be one of the largest in the world, as well as the ongoing development of downtown Denver.

We view our effort to bring major league baseball to Denver as an investment in our economic future. Such an investment now will ultimately help to turn our growing economic challenges into long term benefits.

It is easy to see how baseball has become an important and integral cog in Dever's efforts to have continued economic vitality and growth. For these reasons, I have committed my Administration to do all it can to aid the Denver Baseball Commission in its efforts to attract a major league baseball franchise for our city.

Sincerely,

FEDERICO PEYA, *Mayor.*

The Denver Baseball Commission is a not-for-profit corporation established to coordinate Denver's efforts to acquire a major league baseball franchise. Over the years several names have surfaced as potential owners for Denver's major league franchise; the Commission works with but not on behalf of any one of these ownership interests. We are a public-private cooperative effort—our funding has come from the private sector and our office and services are paid for by the city of Denver.

This arrangement has allowed us to recruit the corporate community and our citizens in countless ways, with the simple goal of demonstrating why Denver is the nation's best available site for a major league baseball franchise.[1]

Denver is not a newcomer to the quest for a major league baseball team. Since 1959, Denver has lobbied for a franchise. In 1978, the Oakland franchise nearly relocated in Denver, but the parties involved in those negotiations were unable to discharge the terms and conditions of that club's lease with the Oakland Coliseum.

Denver's desire for a franchise, as noted in Mayor Pema's letter, is based upon the economic impact it would have on our community well as the pride it can help to instill in the people of our city. In Denver, the potential economic benefits of baseball have been projected to be nearly $75 million annually.[2] The benefits to the fans cannot be measured in dollars.

Any yet, the quest for a major league baseball team for Denver and other cities is tempered by the recognition that these are very real problems confronting the professional sports community today. Two of the most pressing problems are addressed by the legislation currently under review by this Committee: franchise relocation and expansion

The Denver Baseball Commission agrees with the stated purpose of Senator Slade Gorton's bill:

(1) to provide stability in the location of professional sports teams;

(2) to provide predictability with respect to the relocation of professional sports teams; and

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[1] A city must be able to supply an owner, stadium and the demographics to attract a baseball franchise. This chart demonstrates the attractivess of the Denver market. Denver's Demographic Profile, re: Major League Baseball, prepared for the Denver Baseball Commission by Touche Ross & Co.

[2] "The Economic Impact of Major League Baseball on the Denver Region," prepared by the Midwest Research Institute, October, 1983.

(3) to insure that the interests of communities which have supported such teams are considered through an equitable procedure.

Certainly the Denver Baseball Commission has no philosophical disagreement with the need for franchise stability in profession sports generally and expansion in baseball specifically. Thus the debate of your committee will really focus on the manner in which the stated purpose can best be implemented.

I. FRANCHISE RELOCATION

First, let us examine the issue of franchise relocation. The recent spate of actual as well as threatened relocations of football, basketball, hockey and baseball franchises is a problem of grave concern to all cities and fans. Commitments by municipal governments and their citizens to expend millions of follars on the construction and maintenance of facilities deserve protection from owners who simply abandon hometown fields for greener pastures. But is Congressional intervention the best approach in 1985?

Relocations of sports franchises have often come over the objection of the league itself. In the case of the football Raiders, the team fled Oakland despite a unanimous vote of the National Football League to prevent such a move. Similarly, the basketball Clippers recently moved from San Diego to Los Angeles without so much as seeking a vote from the National Basketball Association. The problem in both cases was not the intent of the league to prevent relocation but rather its legal inability to do so.

In these and previous hearings, major league baseball has cited its record concerning franchise stability, and specifically, the fact that of the 10 cities that had baseball in the 1900's, nine of these municipalities presently have a team. We find this record to be, for the most part, acceptable and certainly admirable when compared to that of other professional sports leagues. The Denver Baseball Commission believes that there is a growing consensus among professional sports leagues that recognizes the very real and increasing dangers—both short and long term—of franchise relocations. We believe that this Committee, along with all professional leagues, would agree that if team owners are allowed to relocate their franchises at will, everyone will ultimately lose. The bond between a fan and his or her team would become nonexistent, resulting in a diminishing interest in sports across the nation.

Last year this Committee considered Senate Bill 2505 at a time when the Minnesota Twins baseball club were rumored to be leaving that state. During those hearings, Minnesota Senator Rudy Boschwitz expressed genuine over that situation, prompting American League President Dr. Robert Brown to state:

"All of our mechanics and all of our rules and regulations have been formulated to prevent franchises from moving. We don't like to see teams jumping around the country. We discourage it. We will continue to discourage it."[3]

We all know today that as far as Minnesota is concerned, that situation has a happy ending, with the team's ultimate sale to a local buyer whose intention is to keep the team in Minnesota. We believe major league baseball played a key role in seeing to it that the Twins did not relocate.

As a city that has yet to enjoy major league baseball, we would certainly listen attentively if that league gave any indication of an intent to look at franchise relocations. But the fact of the matter is baseball is not doing so. Commissioner Peter Ueberroth at the Winter Baseball Meetings this past December reiterated to representatives of potential expansion cities what American League President Dr. Robert Brown told you last spring:

"I think that we go on record as saying that we recognize that there are other areas of the country that are fine areas and are interested in baseball, but, we don't think we should deprive a community from an entity that they can appreciate as long as they show the ability to appreciate it."[4]

It may seem incongrous that a representative from a city seeking a major league baseball team would agree with a league that publicly and privately discourages relocation. But we believe that instability in any sport, including baseball, is more dangerous. Nobody scores when a team loses sight of its home base.

Legislative actions setting specific criteria for a league analysis of relocation would be both cumbersome and could lead to the opening of a legal Pandora's box. The only winners in this case would be the lawyers involved in the litigation that

[3] Hearings before the Committee on Commerce, Science, and Transportation, 98th Congress, second session, on S. 2505, April 27 and May 12, 1984, page 129.

[4] Ibid.

would inevitably follow. We believe that baseball, with its anti-trust exemption, has demonstrated its responsibility to its current fans on the issue of relocation and that the other professional sports would likely do the same if they were offered similar protection. Baseball has demonstrated the appropriateness of the old saying, "if it ain't broke, don't fix it," and we believe the same incentives exist today in other sports for promoting stability.

One final area of the legislation you are considering on franchise relocation bears review. Specifically, the Denver Baseball Commission is interested in the section of Chairman Danforth's bill that will grant leagues the power to enforce their own rules as they relate to franchise relocation and revenue sharing (see also S. 298 by Senator DeConcini). It is a concept that we believe bears further study. If combined with a prudent screening by existing owners of all future owners, other professional sports leagues might begin to reach the same level of stability enjoyed only by major league baseball.

We believe the interests of sports leagues and municipalities are increasingly becoming—for very real economic reasons—one and the same. A primary interest of both is the desire to identify in advance solid, responsible owners who recognize the importance of the community in which their teams will be housed.

We believe the ability to enforce legal rules when combined with a recognition by sports leagues for the need for quality ownership interests will result in increasingly stable sports leagues.

II. EXPANSION

While it is still possible that Denver will secure a major league baseball franchise through relocation of an existing team, expansion is considered to be the most likely route for Denver. That is why the section of Senator Gorton's bill mandating expansion for baseball in 1988 is the most intriguing to our Commission. Its importance is magnified for our community if one believes the many observers who list Denver as being in at least the top two of potential new sites for major league baseball.

Obviously, the number one goal of the Denver Baseball Commission is the acquisition of the major league baseball franchise as soon as possible. If Congress were to mandate expansion, and as a consequence, baseball selected Denver as one of the sites, our community would unquestionably welcome the franchise with open arms.

Neverthelss, we believe that Congressional legislation mandating expansion is, from a public policy perspective, improper. It could, in fact, ultimately prove to be counter-productive to the long term goals of both the sport and the communities this legislation seeks to protect.

The problem this section of Senator Gorton's bill addresses is a real one and is closely tied to the section concerning relocation. If franchises are unavailable through relocation, it logically follows that those communities seeking franchises will be left to exclusively pursue expansion for a team. However, despite our agreement with this premise, we would disagree that in 1985 Congressional action is the best vehicle for its implementation. We would submit that the desire of major league baseball to maintain its relative stability has already resulted in their recognizing that expansion is both necessary and inevitable.

While it is true that major league baseball has not yet set a precise date for expansion, Commissioner Ueberroth has stated that it is a "front burner" issue. In his recent remarks before your Committee on February 4, 1985, he stated that:

"Baseball is generally committed to expansion within the next several years by perhaps as many as six teams . . . There is no doubt regarding Baseball's desire and intention to expand.[5]

Certainly Denver would prefer a precise date from major league baseball concerning expansion. We are nevertheless confident that at least three separate market forces are prompting major league baseball to plan for expansion.

(1) Baseball, as an industry has consistently lost money and is now looking at new markets that will improve its overall bottom line.

(2) These same markets, which number at least 10, are now aggressively pursuing major league baseball by demonstrating why expansion is in the best economic interests of both the municipalities and the sport itself.

(3) Baseball, now more than ever before, is competing with other recreational activities for a limited entertainment dollar.

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[5] Prepared remarks of Peter Ueberroth, Commissioner of Major League Baseball, on S. 259 and S. 287, before the Senate Committee on Commerce, Science, and Transportation, 99th Congress, first session, February 4, 1985.

As a result, Congressional intervention at the present time, is not only unnecessary but would also set a dangerous precedent by dictating the time and place for growth in professional sports leagues.

We consider it the task of all municipalities seeking a major league baseball franchise to convince baseball that it is in their economic best interests not to ignore growing markets such as Denver. We do not believe Congressional intervention to be either necessary or appropriate at this time.

In summary, the Denver Baseball Commission submits the following recommendations on Senate bills 259 and 287:

(1) Delete the sections of Senator Gorton's bill that mandate major league baseball expansion by two teams by 1988. The Denver Baseball Commission believes that Commissioner Peter Ueberroth and major league owners are committed to expansion and do not need an act of Congress to make it happen. Moreover, we believe that it is bad public policy for Congress to become involved in determining where and when expansion will occur.

(2) Delete all sections of the proposed bills setting specific criteria for professional sports leagues to use when authorizing franchise relocations. The Denver Baseball Commission believes that the concerns of professional sports leagues are increasingly tied to and consistent with those of municipalities on the issue of franchise relocation.

(3) Delete the sections dealing with the automatic establishment of an arbitration board. The Denver Baseball Commission believes that this section would add an inappropriate layer of bureaucracy and could result in costly litigation.

(4) Consider carefully the section of Chairman Danforth's bill (and similarly S.298), which in essence, grants professional sports leagues the power to enforce their established rules and regulations regarding franchise relocation and revenue sharing. The Denver Baseball Commission believes that if properly drafted, such legislation could help to stabilize professional sports leagues and thereby benefit potentially effected municipalities.

These recommendations are made to your Committee with the understanding that there are no easy answers or quick fixes to these difficult issues. Today we express and opinion based upon our sincere belief that the interests of professional sports leagues and municipalities are increasingly consistent with another. The Denver Baseball Commission believes that if other professional sports leagues were granted the same authority to enfore their league rules as does baseball, the primary beneficiary would be the fan.

However, our recommendations are also made with the understanding that if professional sports leagues abuse these legislative grants or power by ignoring the concerns of the municipalities and their fans, Congressional intervention would be the inevitable result. The Denver Baseball Commission does not believe that the leagues will permit such a situation to arise, as the real casualty in such a case is likely to be the dedication so many Americans have to professional sports.

The CHAIRMAN. Thank you, sir.

Mr. Smith.

STATEMENT OF FRANK SMITH, CHAIRMAN, DC BASEBALL COMMISSION

Mr. SMITH. Thank you, Mr. Chairman. My name is Frank Smith, Jr. I am the ward 1 representative on the District of Columbia City Council. I am also the chairman of the District of Columbia Commission on Baseball.

I am deeply grateful, Chairman Danforth, for the opportunity to appear before the committee to discuss the District of Columbia Baseball Commission and the legislation that will affect professional sports, especially baseball.

Although the focus of these hearings center on professional football, the thrust of my testimony concerns baseball, particularly the absence of this pastime from the Nation's Capital for 13 agonizing seasons.

References to congressional hearings on professional sports for the last dozen years clearly demonstrate an enthusiasm by Mem-

bers of the House of Representatives and the Senate Oversight Committee.

Your desires are shared by the growing numbers of baseball fans in the Metropolitan Washington area, now totaling 3½ million persons. I might add that we are the seventh largest television market in the country.

Congressional interest over the years in restoring full baseball rights to Washington, DC, is greatly appreciated and encouraged. This is the first time that an official representative of the District of Columbia Government appeared before a congressional committee to make the same pitch that many Members of Congress have been making for some time. And I am delighted to have the opportunity to share the mound with you, so to speak.

We have taken great strides to correct our approach to bring baseball to the greater metropolitan area. First, we have established the District of Columbia Baseball Commission. And I might add that it was established by an act of the District of Columbia City Council. Five of the members of the commission are appointed by the Mayor—six of the members of the commission are appointed by the Mayor and five by the city council.

Second, we have identified a prospective owner and financial backer who is a well-known individual, who has publicly and consistently pledged to devote every possible effort to secure a National League franchise for Washington, DC by expansion or by purchase.

We have a Mayor who is fully committed to doing whatever it takes to play ball, and our armory board which operates RFK Stadium has also made plans to upgrade the facilities. I have a total cost of somewhere in the neighborhood of $17 million.

In addition to my responsibility to the District of Columbia Commission on Baseball, I am also a member of the District of Columbia Metropolitan Washington Area Transit Authority. This transit system provides easy access to the stadium by bringing to it millions of fans. And our regional economy will expand as a result of these fans buying tickets at ballgames. We expect that with 1½ million fans, the ticket sales will equal $10.5 million which will contribute $600,000 to our local revenue.

In addition to that, we expect that the spinoff in hotels, restaurants, concessions, and other things will add about $40 million to our general economy.

I might add that these figures compare favorably with the impact of the Convention Center on the economy of downtown Washington.

I will conclude my statement by referring to the testimony given by former Baseball Commissioner Bowie Kuhn, who worked as hard as anyone to return a team to the Greater Washington area. And I quote:

> I believe that Washington has a major and substantial claim to a major league franchise.

As Commissioner of Baseball, I have been working diligently to bring baseball to the Nation's Capital. I thought for a while I had succeeded, and I am disappointed that it has not yet happened, but I shall continue the effort.

These statements were made by Mr. Kuhn before a Select committee on Professional Sports in June 1976. And I think we all know that he is no longer the commissioner of baseball, and we also know that Washington still does not have a baseball franchise.

And I might just add that the attempts on the part of the committee and the Senate to establish some reasonable standards which a franchise must meet before they move out of an area is, I think, something that we must all support. We certainly have a great Redskins team here and we don't want to see them leave town.

And second, I think that there must be some expansion by major league sports in order that cities like Miami, and Denver, and other cities that have this unquenchable desire for professional sports and whose economy needs the input can have a team.

Again, thank you for the opportunity to share these points with you, and I shall be happy to answer any questions.

The CHAIRMAN. Thank you.

Mr. VuKasin.

STATEMENT OF GEORGE VuKASIN, PRESIDENT, BOARD OF COMMISSIONERS, OAKLAND COLISEUM

Mr. VUKASIN. Thank you, Senator. My name is George VuKasin. I am president of the Oakland Alameda County Coliseum Commission. I am a former member of the Oakland City Council, the Oakland Court Commission, and a private businessman operating a firm that is based in Oakland for 61 years.

I might add, Senator, that 5 years ago. the city of Oakland, the Metropolitan Oakland community and the National Football League were alone in the concern throughout the country because of the potential loss of the Oakland Raiders to the Los Angeles area. It is rather heartening today to hear the comments that are being made and to see this concern which is a major concern, a national interest, and I compliment you for your efforts and those of your colleagues.

The Oakland Coliseum was built in 1965 for the Oakland Raiders, then of the American Football League. From then until 1980, when the Oakland Raiders announced their intention to leave for Los Angeles, we were home to one of the most successful franchises in the National Football League. The Raiders had the third highest revenues in the NFL and enjoyed 12 years of sellout games, including preseason games.

Although the Raiders had the highest ticket prices in the league, the fans paid the fare and filled our stadium of 54,616 for 121 straight games. At the same time, there were between 5 and 10,000 individuals on a waiting list for season tickets. The team's presence meant over $75 million annually to our economy.

All these factors made our decision in 1965 to build the coliseum look like a good one. We all know what then happened. Oakland became the first city to fall victim to the auction block, and the Raiders left the Bay Area for Los Angeles, lured by cash grants and protected by the refusal of the Federal courts to take into account what Congress is now trying to legislate.

As I see it, these hearings are about three major aspects of franchise stability.

The first: Should the Government intervene to provide cities stadium authority and fan protection when faced with a situation like Oakland, Baltimore, Philadelphia, St. Louis, and New Orleans?

We are all here today because the Federal Government already intervened in the Oakland case. A Los Angeles Federal judge refused to let a local jury hear evidence on the rights of Oakland in this manner. That same court concluded also that the NFL had no right to require one of its most successful franchises to stay in the community that was granted the franchise.

A lot has been written about this case and the NFL rule that required a 75-percent affirmative vote for a franchise move. However, what has not received much attention is that not one NFL owner voted to allow the Raiders to move.

When reasonable logic is applied to this fact, I fail to see the validity of the court's argument or the jury's decision. We are not alone in criticizing that decision. More than 50 mayors of cities throughout the country, including Mayor Berkley and Mayor Schaefer who appeared here today supported legislation to retroactively overturn it.

The Washington Post, in November 1984 editorial, called it "a whacky legal theory," and went on to say: "it is hard to understand how even a home town court failed to dismiss as preposterous the antitrust arguments here."

The second: Should standards be established to govern future moves? Although in 1982, Congress failed to pass legislation that would have corrected the Oakland situation and provided protection to sports leagues to prevent such moves, 200 Members of Congress thought it was necessary at the time and cosponsored the legislation.

If that legislation had passed, the Raiders would be in Oakland, the Colts would be in Baltimore, the threat of the Eagles' move would not have occurred, and the owner of the St. Louis Cardinals would not be shuttling back and forth between New York and Phoenix.

That legislation would also have allowed the NFL to expand to those places that could support a team with the fans and communities realizing that their support would be rewarded with a stable franchise.

You are now considering setting various types of standards to apply to team movement. We applaud and support this effort. I must point out, however, that none of the standards now being discussed would have allowed the Raiders to move. They could not have qualified under any scenario.

And then finally, third: Antitrust protection to allow leagues to keep teams in a community. The Oakland Coliseum has been a party with the NFL in the *Raider* case. We obviously support their efforts to keep the Raiders in Oakland. We are amazed that they could be forced to pay some $70 million in damages, legal fees, and interest because they fought in court for their rights and ours.

Everyone here today wants franchise stability. The *Raiders* case threatens that stability in almost every sport. If you want leagues to stand up and protect cities, they must be given the ability to do

it without facing the incredible results of the NFL efforts in Oakland.

We also agree that the NFL's practice of sharing revenues be protected in any legislation that is passed. Without this practice, teams will only be able to survive in major media markets and the league will be organized at the dictates of television rather than for the fans and the communities that have provided the diverse strength of the NFL.

We also think broadcast revenue sharing should be adopted in other sports to provide that same protection.

In conclusion, Senator, we commend both you, Senators Eagleton and Gorton for their efforts on behalf of cities for team stability. We are working with you and Members of the House who are moving in this same direction. Representative Courtney Pete Stark, our Congressman, has taken the lead in this matter in the House. He, along with Senator DeConcini, was the principal sponsor of the legislation in 1982 that, if passed, would have made the hearing today unnecessary.

Oakland has been in court now for 5 years in the *Raider* case and continues to attempt to acquire the Raiders under the eminent domain laws in California. That case will be heard by the State court of appeals this year. And I would hope that nothing out of this bill will prevent us from moving toward the eminent domain successful conclusion.

We have had and will continue to pursue any avenue that either will return the Raiders to Oakland or provide for an expansion team to a community with one of the most successful records of fan and community supports.

We are aware that Senator Gorton's bill, S. 287, mandates expansion by the NFL into four cities, with Oakland being one of those. We appreciate that concern and support his goals in trying to bring some order to the chaotic atmosphere of today.

We believe, however, that the NFL will expand if they can legally provide for team stability. We feel our case and record will allow us to compete successfully with any potential city. We have never asked for nor received a commitment from the National Football League for an expansion team. What we have done is work with them in court and in Congress to mutually provide for a solution.

We will stand on our record and our ability to convince the NFL that Oakland should and will again be a city with a team in the National Football League.

Thank you, Senator.

The CHAIRMAN. Gentlemen, thank you very much for a very helpful testimony.

Senator Lautenberg has been voicing his concerns about the have-not cities and their representation, and from the standpoint of at least the sports that you are talking about, all three of you are here representing have-not cities: Denver and Washington in baseball, and Oakland in football.

As I understand it, your testimony is that legislation is very much needed and that the present situation with instability is something which is not to be desired at all. As a matter of fact, in both Washington and Oakland, you have seen teams depart. There-

fore, a degree of stability is to be desired, and legislation would be something which would be useful.

Is that a fair statement of your comments?

Mr. VUKASIN. Yes, sir.

Mr. SMITH. It is certainly a fair statement of our view, Mr. Chairman. We, as you said, have lost a franchise. Actually, we have lost two, one of which was an expansion team in 1971. So we think that—and also, as I said in my testimony, we have got the Washington Redskins here and I think they played 132 games that were sellouts, and there are people standing in line who would have to wait 20 years for a ticket to see them play.

So we have proven that we will support a franchise, and we certainly would like to see not only stability in terms of the franchise we already have, but also some way to have some reason to think that we are going to have a baseball team.

The CHAIRMAN. And it is no great consolation to think that you are going to get a baseball team, but that it might be there for a few years, and then at the whim of the owner, he could pull up stakes and leave?

Mr. SMITH. Absolutely not. Especially when you consider the fact that expansion teams in their first few years do struggle in terms of fan support and also in terms of their ability to compete.

So that we will want some reason to believe that when we do the things that we need to do to get RFK Stadium in shape, we have to spend about $17 million to get it ready to play ball, and once we have done that, we want some reason to believe that we are going to have a franchise here to help us not only retire that debt, but also provide our fans with the kind of support, the kind of opportunity which they wish to have.

The CHAIRMAN. Mr. Katich.

Mr. KATICH. I think that is correct I think the question is not whether or not communities deserve some sort of protection. I think we all here agree that they do. The question is what is the best manner in which that protection can be given.

We think when you compare baseball to the other professional sports leagues, their record on relocation and on stability in general has been quite good. We believe that if the other leagues were afforded the same ability to enforce their own rules and regulations as they relate to franchise relocation, their records would likely be as good as baseball's. As the gentleman from Oakland pointed out, the National Football League voted unanimously not to allow the move from Oakland to Los Angles, so it was not a case of that league permitting the move, but rather its legal inability to prevent it.

The CHAIRMAN. You think the league can do it without the overlay of a commission reviewing what the league decides.

Mr. KATICH. Well, I personally think that that would be the appropriate thing to try, at least initially.

The CHAIRMAN. "That" being what?

Mr. KATICH. That the leagues be allowed to regulate themselves initially. I think that the jury is still out on whether or not they would do a good job. Baseball indicates that they might, if the same motivations are present in the other sports as they are in baseball.

Perhaps one approach—and I speak personally only on this—is to grant a limited antitrust exemption, but include some sort of a sunset provision in the legislation that will require the leagues to come back to you in several years and make an accounting of themselves.

Let's take a look at franchise relocations 2 or 3 years down the line and see if the sort of protections that they're asking for have indeed been able to reach the goal that everyone on the committee and all of us have.

The CHAIRMAN. Let me address your attention to the question of whether expansion should be mandated with specific provision for various cities such as Baltimore or Oakland.

You again, Mr. VuKasin, despite the fact that Oakland is covered in the Gorton bill, would rather not have a specific mandate. Why is that?

Mr. VUKASIN. We have a degree of confidence. We have been fighting for 5 years now and spent, as I said, Senator, substantial amounts of money in supporting the National Football League in their endeavors to return the Raiders back to Oakland.

We have done two things in Oakland. First, not only in spending the money and working hard legally to bringing them back; second, we have also developed a program in the community to go out and develop some type of support, whether it's an existing franchise or an expansion franchise in bringing back to Oakland a National Football League. I think our record speaks for itself.

I think the National Football League will give us the appropriate hearing at the time, and I think that we maybe are a few percentage points ahead of most cities because of our proven track record. And so because of that—we will take anything that comes along that will provide us with a team—but because of that, we want to leave all avenues open.

The CHAIRMAN. Mr. Smith, do you have a view of whether or not we should mandate specific expansion into particular cities?

Mr. SMITH. Well, let me just say, Mr. Chairman, that in the testimony which I referred to earlier, by Mr. Bowie Kuhn in 1976, the league came awfully close to promising to put a team in Washington, DC. It has been a long time since then and we still do not have a team.

And I must say that the Chairman of the Commission spent an awful lot of time with the front office trying to get some rhyme or reason or method by which expansion is going to take place. I think my testimony would have to be right now that I frankly don't know what even the process is, or how a city applies for an expansion team right now, although they are telling me that expansion is going to take place some time in 1985.

So the answer to your question is that I would like to think that baseball will choose to do this on its own. I represent the seventh largest TV market in the country, and people with good business sense will look at this and say we need to put a team there. But it has been 9 years now and they have not done it yet.

So I don't know quite how to get a team unless somebody says to them they have got to expand. Right now, I guess if I had to read the signs that I have in front of me, I would say that baseball does

not have any concrete plans for expansion right now, although we have the fire here and we are ready for a team.

So I don't know how we get there without giving them some kind of a nudge, and yet I know from talking to them that they are opposed to this bill. I don't want my city punished because I came down here and supported something I know they are opposed to.

But I do think that there will have to be some—if the teams are going to continue to enjoy, and if football is going to get an exemption from antitrust, I think there has to be some provision for expansion. Otherwise, it is—that need a team—even if Denver and Washington were able to get one out of this first round, the rest of the cities would still go without a ball club.

So there has to be some provision for expansion.

The CHAIRMAN. If it is done by a clear understanding, it would be just as good as having it done by congressional action, wouldn't it?

Mr. SMITH. I would say yes, except that my experience is, after 9 years of waiting, that if it is a clear understanding I hope it is an understanding with a sunset provision so we can come back and examine our understanding later to see if we have lived up to our understanding.

So I would say yes to that, but I would like to have some provision that we would be able to come back and look at it later.

The CHAIRMAN. Mr. Katich.

Mr. KATICH. Well, certainly we want a baseball team as soon as possible in Denver, and if Congress agreed with Senator Gorton's bill and passed that legislation and baseball selected Denver, it would certainly be a team that we would accept and welcome with open arms.

But I really believe that you begin to set a very dangerous precedent by mandating when, where, and how expansion is going to occur in professional sports leagues. First, I think that that is a decision that ought to be uniquely in the hands of a professional sports league.

Second, by setting such a precedent, Congress opens the door to future involvements based on the same motives this legislation is designed to protect for example, what is to keep Congress from using that precedent, and saying: There are two or three markets out there that have major league teams right now that are not doing well financially, and there are two or three markets out there that would be doing much better, so let's tell baseball they must move a baseball franchise from community X to community Y.

As absurd as that sounds, it follows logically from this sort of intervention by Congress. So, while we would certainly like to have a team, we think that baseball has given us every indication that they do, in fact, see the economic benefits of expansion, and that it will be something that will come in the near future.

The CHAIRMAN. Finally, I would like you to respond to the same question that I earlier asked Mayor Berkley of Kansas City. Each of you represents a community that has lost a sports team or that wants a sports team. You do represent those communities.

Why is this important to you? Why is it significant that a city like Oakland keep its team or get a team? What difference does it

make to the District of Columbia whether it has a baseball team or not? I mean if people want to go to a baseball game, why can't they just get in their car and drive to Baltimore or some place? What's with Denver? Why should they have a baseball team? Why do they care?

We have super TV stations, network coverage, and cable coverage, why can't people just turn on their set and watch, say, the Kansas City Royals play? Why does Denver want a team? Is it just a matter of local pride, or is it something that is deeper than that?

Mr. KATICH. Well, in Denver's case, first of all, to see a game in person is going to require more than a drive to Baltimore, I can assure you. We have to go all the way to Kansas City. So it is quite a drive.

The financial implications for a growing community like Denver of a major league baseball franchise are very important.

We all know the difficulties that cities are having in making their budgets on an annual basis. Major league baseball, with 81 dates in a city-operated facility, will be very important for the future economic growth and vitality of Denver.

But obviously, we all would not be here and you would not have such large crowds watching these hearings if there wasn't something special about professional sports and what they mean to the psyche of a community. We have had the Denver Broncos selling 76,000 tickets a week for as long as I have lived in Colorado, and before that, which was 1971. Our basketball franchise, the Nuggets, has been supported by Denver for many years while our minor league baseball team, the Bears, has been one of the most valuable and successful franchises in America.

So we know what professional sports means to a community and what major league baseball will mean when it does come to our city. And as a growing community with many, many transplants in it, major league baseball just seems to make sense for a city like Denver.

The CHAIRMAN. Mr. Smith.

Mr. SMITH. Well, first of all, let me just say that I think baseball has hurt itself by not having a team in Washington. Aside from the fact that Senators, Congressmen, and Presidents like to go to ballgames, baseball has a number of issues that are before the Congress every year, that they have an interest in. And having a team here I think would provide them with a ready lobby.

And second, this is the seventh largest television market in the country, and for some of the teams that are strapped right now for resources because the economy of their franchise is not that great ought to be able to share in the revenues that, from a big market like this, would support some of the other franchises.

But if all of that were not true, the District of Columbia would still be looking for a franchise because of the economic impact that such a team has upon our economy. And in my presentation I said I thought that baseball compared rather favorably with the Convention Center, and I wanted to use that as an example, because the Convention Center kicks off about $30 or $40 million in indirect economic impact in our city. Baseball does the same thing.

We use a figure—I think around the league, they used a figure that the economic impact of a franchise is about 4½ times what

the ticket sales are. So if you would have ticket sales of $10 million, you are talking about a $45 million economic impact in restaurants, parking, concessions, and things like that.

So if you represent a city, it is important for you to have a sports franchise in your city as a part of just trying to make the economy work, provide the jobs, things like that.

But aside from all of that, baseball also provides wholesome, family oriented entertainment. And I guess for people like us who still have a little bit of little boys in us, who always wanted to play the game or see it close up, you still want to be able to go and take your kids.

So it improves the quality of life to be able to take your kids out to a ballgame on the weekend, especially when you represent major metropolitan areas like ours, where trying to find some wholesome family entertainment often is difficult to do at a reasonable price.

We love our Redskins, but trying to get a ticket out there, especially if you have got two or three members of a family, trying to get a ticket to one of those games can take you a lifetime.

So it does provide, I think, not only an economic impact, but it improves the quality of life. And I think it is for that reason that our city has joined in the competition and in the struggle with most of the other cities. And I might just add, it is not all competition.

If baseball doesn't expand, Denver doesn't get a team, and Washington doesn't get a team, nobody gets one. If they expand, we may get one and Denver may get one, and the other people will have a chance.

So although it appears as though we compete, in fact we don't really compete, because the first issue is expansion. And unless somebody does something about expansion, none of us are going to get a ball club.

So I did want to say that. But I think it has a tremendous impact and that is why we are interested in a franchise.

The CHAIRMAN. Mr. VuKasin.

Mr. VUKASIN. Senator, they did a good job of taking most of my points. And I agree with what both of them said. I would like to add a little more.

I guess I could repeat what they said and what others said today about the financial, the recognition, the community esprit de corps. I think probably one of the most significant points is the pride within a community.

It is very difficult in this country today to be able to develop community pride unless you have something you can hang your hat on, as you so well recognize.

A previous speaker made a comment that I would like to just dwell on for a second. I think a professional sport franchise, particularly in the Oakland area—and I will give you the example of both when the Raiders were in Oakland and the Oakland A's presently provide—and that is to the young people.

It gives them a role model, something to look at. It gives them a chance to wear a T-shirt or a baseball cap or a uniform that might have the green and gold colors of the Oakland A's or the silver and black of when the Raiders were in Oakland.

It gives them a feeling of pride, a feeling of association, a feeling of wanting to win, in which they take back to their homes, to their schools, to their teams, to whoever it might be, that example which helped them to grow up to be the type of men and women that we would like to see growing up in this country.

And I think that is why a professional franchise is certainly important to a city.

The CHAIRMAN. Gentlemen, thank you very much. That concludes the hearing.

[Whereupon, at 11:12 a.m., the committee recessed.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. DENNIS DECONCINI, U.S. SENATOR FROM ARIZONA

Mr. Chairman, I welcome this opportunity to testify before your distinguished committee. Overall, I fully support this committee's effort to bring stability to the professional sports industry. I have concerns, however, over the degree of Govenment involvement in the day-to-day business decisions of individual owners. Today, I would like to share those concerns with you; draw distinctions between the various proposals before this committee and the Judiciary Committee; and recommend a procedure that ensures closer scrutiny of all aspects of this legislation prior to consideration by the full Senate.

First, there is much common ground between the bills before this committee, particularly S. 259, and the bills currently before the Judiciary Committee. My bill, S. 298, and the Danforth/Eagleton bill are very similar. Both recognize the importance of creating an antitrust exemption for revenue sharing. Dividing league revenues reduces financial disparities among clubs, thus preserving long-established professional sports traditions in small and mid-sized communities across our nation.

The Danforth/Eagleton bill implicitly, and my bill explicitly, create an antitrust exemption for league decisions that require an individual owner to refrain from relocating. Today, publicly financed sports stadiums dominate many of our city's landscapes. By creating this antitrust exemption, we protect those cities and communities that have heavily invested in sports franchises. The Danforth/Eagleton bill and the DeConcini bill offer this protection without unnecessarily inserting government into the affairs for private business.

The Gorton bill, I believe, goes too far in imposing the will of Congressional managers upon private business enterprise. The creation of a Professional Sports Franchise Arbitration Board is an over-reaction to a problem more narrowly addressed by the Danforth/Eagleton and DeConcini bills.

Similarly, S. 287's call for forced NFL and Major League Baseball expansion represents an unwarranted Congressional fiat. Congress should not be in the business of selecting cities for NFL or baseball franchises. Instead, Congress should create a legal climate in which leagues can follow their best business judgment. Before this committee, Commissioner Rozelle testified that expansion of the NFL will occur only after the instability induced by the Raiders decision is corrected. My bill provides that stability without unnecessarily inserting the Government into professional sports' board rooms.

Although the Danforth/Eagleton bill and my bill share much common ground, there are differences that merit attention. For example, the Danforth/Eagleton bill does not clearly clarify the relationship between the Sherman Act and league decisions to relocate a franchise. S. 259 suffers from the same criticism that Senators Heflin and Ford levied against the franchise relocation bill before this committee last year. Any legislation that does not deal directly with the antitrust roots of this problem, and I quote the Honorable Senators from Alabama and Kentucky, "is a tenuous method which sidesteps the issue at hand—the explicit clarification of the Federal antitrust laws as they apply to the collective actions of professional sports league members." End quote.

The bill that I have proposed addresses this point directly by leaving intact the Sherman Act's applicability to league decisions to relocate a franchise. The Danforth/Eagleton bill does not clarify this point. My reading of S. 259 suggests one of two alternatives. Either S. 259 leaves decisions to relocate a franchise subject to antitrust scrutiny; or, S. 259 implicitly exempts league decisions from antitrust scrutiny once the league determines that relocation of a team is reasonable.

If S. 259 does not insulate league decisions from antitrust scrutiny, then S. 259's list of factors for determining the reasonableness of a decision to relocate is unnecessary. Enforcement of the rule of reason should be left to the courts. Furthermore, I can conceive of no instance when an antitrust plaintiff would resort to S. 259,

given an available antitrust remedy. Why would a plaintiff bring an action based on S. 259 when that plaintiff could bring an antitrust action without the attendant S. 259 limitations on the District Court's role as the primary fact finder? A better approach is to follow the path of S. 298, leaving decisions to relocate to the sound business discretion of businessmen and women, subject to antitrust scrutiny and judicial review by Federal District Courts.

Alternatively, S. 259 may be interpreted to exempt league decisions to relocate from antitrust scrutiny. If S. 259 provides that Federal District Courts are bound in antitrust litigation by a league's conclusion that its decision to relocate is reasonable, the result is a nearly insurmountable burden for antitrust plaintiffs. A court could only overturn the league's decision if that decision was not supported by substantial evidence on the record, or if that decision was obtained by corruption, fraud, or undue means.

Legislation correcting the excesses of the Raiders decision must address these antitrust issues. My bill confronts these issues head-on. As I mentioned earlier, the Danforth/Eagleton bill and my bill share much common ground, and I am convinced that our differences can be ironed out. Consequently, once this committee reports legislation dealing with these significant antitrust issues, I will suggest that Chairman Thurmond request sequential referral with a time limit for Judiciary consideration of the antitrust aspects of the Commerce-reported bill.

Only by clearly defining the extent of any antitrust exemption that we create for professional sports, can we reintroduce stability into the professional sports industry, and thereby provide a climate for necessary league expansion.

STANFORD UNIVERSITY,
DEPARTMENT OF ECONOMICS,
Stanford, CA, February 9, 1985.

Senator JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: Thank you for the invitation to attend the hearings on legislative proposals regarding league rules governing the location of teams in professional sports. As you know, my teaching schedule precludes my attending the hearings, but I nevertheless wish to put forth my views on this matter. I hope that you will include my comments in your records, and consider them before taking legislative action.

My comments are organized according to a few key issues that, I believe, bear on the question of the appropriate federal role in team location decisions. I will confine my comments to matters relating to the economic and financial performance of sports enterprises, since this is my area of professional expertise.

1. The meaning of profits data in sports

Legislative proposals regarding franchise locations all incorporate various measures of financial performance in the question of whether a team shall be permitted to move. In my opinion, these provisions are likely to have a highly perverse effect on the management of teams. All research of which I am aware concludes that sports teams are run as businesses; that is, the predictions of profit-maximizing theory are borne out by operations. Some examples: Teams in better markets tend to be stronger, and better, higher-priced players tend to be acquired by these teams, regardless of the restrictions leagues place on the freedom of players to bargain with multiple teams. Leagues inevitably behave as monopoly theory predicts when action is taken to lessen competition. Thus, the Sports Broadcasting Act in 1962 tripled the television rights fees charged by baseball and football, and the merger of the AFL and the NFL caused a reduction in player salaries. Moreover, the operations of the few teams that have not been profit oriented—like the Cubs under Phil Wrigley, or the Red Sox under Tom Yawkey—differ dramatically from the rest.

At the same time, the prices paid for sports franchises are substantially in excess of the amount that can be explained by the profits of teams. Many find paradoxical, if not implausible, the view that sports teams are operated for profits, but are generally overpriced; however, the explanation is relatively straightforward. First, owning sports teams is a tax shelter, owing to the economically unwarranted but judicially and legislatively sanctioned practice of "depreciating" players after a team is purchased. Although Congress tried to legislate a fifty-percent ceiling on the fraction of a team's price that could be so amortized, recent court decisions have effectively undone this limit. The consequence is that the US Treasury pays half the cost every time a team is sold.

The effect of this practice is to bid up the price of a franchise—this factor alone means that a franchise will sell for twice what it is worth economically. Obviously, since the object of ownership is in part to avoid taxes, it also means that most teams will always show book losses, reflecting the bloated prices that are paid for them. Another consequence of the tax shelter is that they enhance the value of team ownership to people who have no long-term commitment to a team, to sports, or to any city. They want five to ten years of tax writeoff, and then they want to sell to the highest bidder. This increases the likelihood that franchises will move from city to city.

The second factor pushing up sports franchises is that there are other business reasons to own a team than simply the income, direct and through tax preferences, that it can generate. Owners of sports franchises receive a great deal of free publicity, and have an inside track in negotiating business arrangements in activities related to sports—like building stadiums, or selling beer in the stadium. The books of the team do not reflect the value of this free advertising to the owner; owners pay nothing for it, and the benefits they receive appear on the books of the other companies they own. Obviously, the winning bidder for a sports franchise that has come on the block is likely to be someone who not only can take advantage of the tax shelter, but who can obtain valuable advantages from ownership in other business enterprises.

There is nothing unethical, let alone illegal, about owners taking advantage of either of these aspects of ownership. I cite them as realities to be considered, not criticisms of owners. But their significance is this: the people who own teams for these multiple purposes are the most likely to want to sell a team later (when the full value of tax writeoffs and publicity is captured), and if this entails moving to another city, so be it. Moreover, because the team's operations will not be the purpose of ownership nor the principal source of economic gains associated with ownership, the teams will appear to be financially weak. Their debts plus depreciation will be based on a bloated sales price, which more than offsets team income (to be passed on to offset other taxable income).

Now consider the perversity of making financial losses a necessity for relocation. Suppose that most teams actually make money in that their revenues exceed their operating costs, neglecting the depreciation of players and interest on purchasing the team at a high franchise price. And suppose an owner really is an old-fashioned sports entrepreneur who is not interested in the tax breaks and not involved in other businesses from which he can benefit from ownership. And suppose that his team is not doing nearly as well as it could in another city. Reluctantly, he is most likely to sell the team at a high price. The new owner, with fat writeoffs and high interest, can then show a loss and move the team. Meanwhile, another team has moved into the category of those owned for short-term, nonsports reasons.

The bottom line is this. Financial performance information in sports is just about worthless as a guide to whether a team is viable. It is therefore useless as a criterion in determining whether a team should move. Moreover, to so use it actually increases the likelihood of the very problems the legislation is designed to stop.

I might also point that one should be highly skeptical of arguments from sports owners about the economic necessity of any policy intervention to benefit them by extending antitrust exemptions or providing further subsidies. Far more meaningful than the profits data as an indicator of the viability of teams is the price at which franchises sell. It does not stand to reason that people will pay tens of millions of dollars for businesses that are about to fold.

2. Fan interests in team locations

The most commonly expressed sentiment about the relocation of a team is the pain it creates for fans in the city that the team deserts. As a representative of citizens in St. Louis and Kansas City, you obviously will hear this part of the story often. But this is one part of a much larger tapestry.

We must first observe that, at the level of cities, the movement is a zerosum game: there must be an equal number of winning and losing cities. St. Louis was the winner when the football Cardinals moved from Chicago, for example.

But even this is a very superficial way to conceptualize the issue. The two keys are: the economic incentives to move, and the implications regarding competition and the monopoly power of sports teams.

Teams move because they expect to make more money in the new city. They make more money because more fans will either come to the game or watch it on television. Hence, the winning bidder when a franchise is up for sale will, on average, be from the city that has the most to gain from it—the one whose fan demand indicates the biggest willingness to pay for it. Thus, unless owners are fools, they

will tend to relocate teams according to the intensities of the desires of fans for teams. That is, there is good reason to believe that the gainers care more than the losers--that an attempt to prevent relocations will, on balance, hurt fans (in the aggregate) more than it helps them.

An immediate response to this argument, of course, is that, recently at least, movements have been to add more teams to the largest cities that already have teams. The football Cardinals, for example, threaten to move to New York, where they will be team #3, and the basketball Clippers deserted San Diego to go up against the Lakers in Los Angeles. How can the second team in one city be more valuable than the first somewhere else? There are two reasons.

First, the number of "teams per capita" is a lot smaller in the biggest cities than the smallest, while seating capacity at stadiums and areas tends to be about the same. Hence, it is quite plausible that a lot more people in Los Angeles or New York cannot obtain tickets to desirable games than would be the case in Kansas City or San Diego.

Second, the real monopoly power in sports is held by the teams in the big cities with the largest excess demand for sports. Generally, these teams do not even have to be good to pack in the fans—witness the recent history of most New York sports teams. The only source of possible immediate competition for a team that is raking in big profits in a large city by fielding a bad team is the threat that a better team in a smaller city will move in. Note that when Al Davis moved the Raiders, always one of the best football teams, into Los Angeles, the Rams immediately took steps to turn a miserable but highly profitable team into a highly competitive one.

I believe that this last point is of great significance. To make it difficult for teams to move is to increase the protection any team has against competition from other teams in the league. That is why owners, on balance, want to control team movements. They want movements to be toward cities with no teams, increasing the extent to which each team has a local monopoly. The problem is that while they like this collectively, individually they see dollar opportunities from moves. This is the standard problem of a cartel—it has a great deal of trouble preventing competitive juices from flowing, for the very practices that create monopoly for all also create incentives for each member to cheat on the rest. The tight rules leagues used to enforce regarding team movements succeeded in minimizing intraleague competition; Al Davis destroyed these protections, introducing an important new competitive element that threatens the positions of weak teams in strong markets.

Normally, we believe that the quest for profits in a competitive environment is the strength of a free enterprise system. There is no good reason to believe that sports are different, as long as competition is allowed to work. Today, competition can occur in two forms: a new league can form and move into territories occupied by the old, and one team in a league can encroach on the turf of another. The former is expensive, uncertain, and time consuming. It will be years before the USFL is a real competitor for fans against the NFL, if ever. Competition within a league is more important a threat, at least in the short run. It only requires that one team threaten to compete, not a whole league, and it does not require a long period of establishing credibility as a major league organization. It is this that makes me especially concerned about provisions in the legislation that indicate that the effect on existing teams in the new city will be a criterion for evaluating prospective moves. I would think that the effect the Raiders had on the Rams was a positive reason for their move, not an argument against it.

3. The root problem: Numbers of franchises

All of this does not deny the important fact motivating the proposals by you and Senator Eagleton, which is that two well-identified cities are threatened with loss of a team. It is empty consolation that sports generally is better for such competition, and that people elsewhere will derive new pleasures from their new teams.

But the real problem has to do with the fact that the number of teams is smaller than the number of cities that want teams, and the number of owners that are willing to operate one. Sports leagues excercise tight control over the number of teams, and it is in their interest to limit them to fewer than the market will bear. Again, we have a straightforward monopoly problem: each league is a monopolist in membership in that league, and monopolists maximize profits by artificially curtailing output. The leagues benefit from the competition among cities for teams. They also benefit from holding down the number of teams that share the broadcasting revenues. They further benefit by holding down the number of teams so that when, for any owner, it is time to sell, the price of the scarce franchise is bid up.

In general, I am highly skeptical of any regulatory or other policy intervention in professional sports, for I believe that it is asking for trouble. The financial informa-

tion is too clouded by other factors to make sensible control feasible, and the contentiousness (and general social inconsequentiality) of the politics of cities fighting over teams in a Washington regulatory office or a federal court would be funny if it were not such a prodigious waste of time and money. But with all of these doubts, the one rule that I could see making is an insistence on continuing, regular expansion of major sports leagues as long as there were prospective well-financed, respectable owners who were wiling to pay a reasonable price for an expansion team. To put the matter another way, we should not allow the issue regarding the St. Louis Cardinals to be whether New York or St. Louis gets them. Both cities could obviously support them. The more central question is why we allow the National Football League to put us in the position of even debating the issue, and indeed causing us to examine whether we should decide the issue by giving them yet another antitrust exemption to protect them from competition among themselves?

If there were more teams, the issues addressed in the proposed bills would be likely to disappear. As long as St. Louis could support a team, one would be there. Moreover, other locations which have fewer teams than they are willing to support would be better served, so that the Cardinals would have less reason to move. And finally, with more teams and easy movement as well as freer entry, fan loyalty would begin to figure into the calculus of an owner. Teams that moved around a great deal would, on balance, probably not do as well as teams that stayed put and developed their home markets.

My primary conclusion is that anticompetitive policies detract from stability, rather than add to it. The federal government, through antitrust exemptions and tax preferences, has created the peripatetic team. The solution is to let the market work: to let fan interest determine the number of teams, not just their locations, so that teams must please fans to succeed. Our objective should be to create an institutional and legal environment in sports where the best business strategy is to be in the business of sports (not tax shelters) and, in that business, to be deserving of the kind of fan loyalties that dissuade competitive entry—not because the team is a monopoly, but because it provides a service that is difficult to beat. Intruding into sports location decisions with regulations and lawsuits—and more monopolistic control by leagues—goes in the wrong direction.

Sincerely,

ROGER G. NOLL,
Professor of Economics.

CITY OF ST. LOUIS,
OFFICE OF THE MAYOR,
St. Louis, MO, February 19, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: I am pleased to be able to present this letter to the Committee on Commerce, Science and Transportation in support of legislation to protect the public interest in professional sports franchise relocations. I regret that City business prevents me from appearing in person before the Committee, but am grateful to Senator Eagleton for presenting my views and the concerns of the people of St. Louis on my behalf.

Professional sports teams have in recent years assumed increasing importance in the major urban communities in the United States. More and more teams have become an integral part of community identity, both to people who live in the areas where teams are located and to people across the nation. Teams are part of the lifestyle, image, atmosphere of a community. To think of St. Louis is to think of the Cardinals, to think of Cincinnati is to think of the Reds, to think of Detroit is to think of the Lions and Tigers, to think of Milwaukee is to think of the Bucks . . . Sports teams—baseball, football, hockey, basketball, soccer—do not just play and live in a city, they are part of it, and are a vital ingredient in what makes each city what it is. Sports teams provide community self-esteem in a way which perhaps nothing else does. Indeed, in St. Louis, a retired professional athlete that you may have heard of—Stan Musial—may be by himself the most easily identifiable image for St. Louis, and as a result he is prominently featured in ads across the nation touting "The State of St. Louis".

Teams are not only vital to the cities in which they are located and the people of those cities, but their influence and importance covers a broad region, far beyond the borders of the city itself. St. Louis is a city of 450,000 but is the heart of a region

of almost 2½ million people, with millions more within several hundred miles. For all of those people who identify themselves with the community of St. Louis, the presence of sports teams in St. Louis—and the ups and downs of those teams—are central to their feelings about and devotion to the community of St. Louis. In fact, it is apparent to me as a close watcher of the community mood that the fortunes of our teams are a big part of that mood all the time. When the baseball Cardinals won the World Series in 1982, the community euphoria lasted for weeks and the warm glow lasted for months, permeating the entire spirit of the people of St. Louis.

Because sports teams are so intimately tied up with the identity and spirit of a community, it is terribly traumatic for the whole area when a treasured team considers leaving or actually departs for a different city. We in St. Louis are no strangers to that trauma. Two years ago, we almost lost our Blues hockey team and only a strenuous community effort was able to save the team for St. Louis. Even people who are not particularly fans of hockey were upset, and our civic pride really was wounded. But fortunately, the civic pride and determination of St. Louis were sufficient to find a solution to keep the Blues in St. Louis. For a community to perceive itself as a winner—and for others to do so as well—it must win battles such as that one.

We in St. Louis are now going through that trauma again, as rumors abound that the football Cardinals are considering possible locations other than St. Louis. While we hope that the team will remain in St. Louis for many years to come, there is no doubt that even the public discussion of a possible move is damaging to the community spirit and very difficult for people to accept—both for football fans and those who are not deeply attached to the sport.

As our own experience with the hockey Blues and football Cardinals indicates, there is in this country these days almost a mad scramble for professional sports teams. The community identify of which I have spoken is much of the reason. That scramble now pits community against community, state against state—with government often in the middle, whether it chooses that role or not. For when teams threaten to depart, the people look to their governments to react, to find solutions. In many cases, that reaction becomes a bidding war between communities, often with large sums of public money involved.

The intensity of that scramble makes this an entirely appropriate time for Congress to enact legislation to provide a reasonable framework for the consideration of moves by sports teams. I am very pleased that Senators Eagleton and Danforth have introduced a bill which will fairly balance the interests of communities, fans, teams and leagues. The bill would give communities and fans protection against midnight raids, but in a way that give fair consideration to the needs of team owners. The Eagleton-Danforth bill effectively gives the community and fans a voice in a decision about a franchise shift, through reasonable standards enacted by and administered by the league of which the team is a member.

The Eagleton-Danforth bill would give communities all across the country the kind of protection which makes sense to prevent unjustifiable franchise moves and to provide a forum for deciding about those which may be justified:

> Professional sports leagues would be able to make sensible decisions balancing the interests and needs of everybody with an interest in the team's location. Baseball now has that right with its antitrust exemption, but it is not clear that other leagues have it. As a result, the interests of the people of St. Louis, for example, may be able to be ignored by team owners with a questionable right of the National Hockey League or National Football League to intervene. Local areas may not always get their way, but at least they will have a chance to be heard.
>
> Criteria could be applied which are fair to all and which are uniform. Teams would not be expected to operate without making a reasonable profit, but neither would teams be able to abandon areas which support them well. The same standards would be applied to all proposed franchise shifts.
>
> The mad scramble between communities should be ended, with all playing by the same rules and everybody operating on a known timetable.

Government would not by this legislation suddenly be intruding in an otherwise private concern. Professional sports teams are not just like any other business. Not only do communities identify with them as civic assets and part of what makes the community what it is, but teams almost everywhere benefit from significant public financial support. In most cities, for example, the major baseball and football stadiums, and often the basketball and hockey arenas, have been built with public funds—tens and even hundreds of millions of taxpayers' funds. In St. Louis we happen to have perhaps the only major new stadium which was built with private funds, but even in St. Louis a very major public expenditure was made on the stadi-

um complex for roads, lights, sewers and the like. About 20 years ago, the people of St. Louis approved a bond issue of about $8 million for those improvements to go with the stadium which cost about $32 million (privately financed). Obviously, those figures would be much higher today. When teams contemplate leaving, public resources are again often sought to help prevent the team from moving. The City of Philadelphia, for example, agreed to forgo almost a million dollars in rent annually on the publically-financed stadium in order to encourage the Eagles to remain. Public help for teams means that the public should have a voice in the location decisions of those teams.

Further, the proposed legislation does not make Congress or local government the arbiter of a team's fate. It merely sets a firm, sensible framework for the leagues and teams themselves to make franchise location decisions. Leagues are given the power to set the rules and make the choices, based upon realistic standards. Government would get involved only as a last resort, through the courts, which are established just so that disputes can be fairly resolved.

The bill also recognizes the economic interests involved in sports franchise shifts. Obviously, the team's finances are a central concern in any possible team move. But enacting legislation also recognizes the economic importance of the team to the community. For not only do communities derive much of their identity from sports teams, those teams also are vital contributors to the economic health of the area. The loss of a sports team can be a real blow to the economy of a region. An independent analyst has estimated, for example, that the loss of the football Cardinals would produce a total direct and indirect economic loss to St. Louis of $33.6 million, the loss of more than 1,100 jobs, and a loss of local revenues in the amount of $1.4 million. That is the equivalent of the loss of a major manufacturer from the community.

Sports teams have a major influence on the tourism and convention attractiveness of a city. That industry is the third largest in the State of Missouri, and a crucial part of the economy of the State and region. A major part of the reasons that many visitors come to St. Louis is the presence of our professional teams—both in 1982 and 1983, for example, the baseball Cardinals were the second most important attractions for visitors to this area, right after the Gateway Arch. Estimates are that a third to half of the tickets sold to baseball games in St. Louis are sold to visitors.

Major cities in this country get considerable benefit from having sports teams play in their area, and in turn sports teams get considerable benefit from those communities. It is time that Congress enact a legislative framework that will halt the mad scramble for teams which pits community against community, and does so in a manner which is fair to fans and teams alike. The Eagleton-Danforth bill would do just that, and I urge Congress to take prompt action to approve such legislation.

Sincerely,

VINCENT C. SCHOEMEHL, Jr.,
Mayor, City of St. Louis.

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